No. _____

In the Supreme Court of the United States

EDWARD ALLYN HUDACKO, *Petitioner,*

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET YI MAN LEE; DIANE EHRENSAFT; STEPHEN ROSENTHAL; ASAF ORR; NATHANIEL BIGGER; DANIEL HARKINS; AND CHRISTINE UNDERHILL, FKA CHRISTINE HUDACKO

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

With his divorce, a state family court stripped Ted Hudacko of all parental rights but one: "any gender identity related surgery" on his minor son required Hudacko's approval. When such surgery occurred at a state hospital without his knowledge or consent—presenting another instance of what four Justices call "a question of great and growing national importance"—Hudacko sued for violating his parental rights. He pleaded that the procedure was surgery and defendants knew it. Yet the Ninth Circuit affirmed dismissal of his claims, determining that qualified immunity applied because Hudacko did not present controlling judicial precedent under similar facts, thus failing to show a violation of clearly established law.

The questions presented are:

1. Whether judicial decisions are the only valid source of clearly established law (the approach of the 5th, 7th, 9th, 10th, and D.C. Circuits); or whether other sources of law or non-legal materials, like professional knowledge, may also be examined (as in the 1st, 2d, 3d, 4th, 6th, 8th, and 11th Circuits)?

2. Whether the same clearly established-law test applies to all government officials, or whether as a threshold question courts should determine "whether immunity was historically accorded the relevant official in an analogous situation at common law," as this Court used to ask in qualified immunity cases and still does for absolute immunity. *Baxter* v. *Bracey*, 590 U.S. 1011, 1014 (2020) (Thomas, J., dissenting from denial of certiorari).

PARTIES TO THE PROCEEDING

The case caption contains the names of all parties to the proceeding.

Petitioner Edward Allyn Hudacko was the Appellant in the Ninth Circuit and the Plaintiff in the district court.

Respondents Regents of the University of California; Janet Yi Man Lee; Diane Ehrensaft; Stephen Rosenthal; Asaf Orr; Nathaniel Bigger; Daniel Harkins; and Christine Underhill, fka Christine Hudacko, were the Appellees in the Ninth Circuit and the Defendants in the district court.

CORPORATE DISCLOSURE STATEMENT

Petitioner Edward Hudacko is an individual person, and no corporate disclosure is required.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case:

- *Hudacko* v. *Regents of the University of California,* No. 24-7360 (9th Cir.) (opinion affirming dismissal entered October 21, 2025 (App.A); petition for rehearing and rehearing *en banc* denied March 11, 2026 (App.E));
- *Hudacko* v. *Lee,* No. 3:23-cv-05316-SI (N.D. Cal.) (order dismissing claims entered November 25, 2024 (App.B); judgment entered against Hudacko November 26, 2024 (App.C)); and
- *Hudacko* v. *Lee*, No. 3:23-cv-05316-SI (N.D. Cal.) (order granting motions to dismiss in part and denying in part entered August 20, 2024 (App.D)).

TABLE OF CONTENTS

[1] The names of minor children contained in the exhibits to the Second Amended Complaint have been replaced with "[S.H.]" and "[W.H.]." Additionally, sensitive information or information concerning other individuals has been redacted or excerpted.

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Provisions

Statutes

Rules

Other Authorities

INTRODUCTION

This is a case about the sterilization of a child.

That tragedy was made possible by state actors who trampled the oldest of the fundamental liberty interests recognized by this Court—the constitutional right to direct the upbringing of one's child, including directing that child's medical treatment. State medical officials, aided by other state actors, performed gender-identity related surgery on a minor without the father's consent, Petitioner Ted Hudacko, despite a court order requiring the father's permission.

But this case is about more than Hudacko's tragedy. The petition presents questions of exceptional importance to parents throughout the country. The state defendants facilitating or performing the sterilization via gender identity-related surgery on a child have escaped any legal consequence through qualified immunity. The Ninth Circuit decision so holding ignored Hudacko's clearly pleaded allegations that the defendants knew they were performing surgery and knew a court order prohibited it without Hudacko's consent or court permission, neither of which they possessed. And that Ninth Circuit decision conflicts with seven other Circuits, taking the minority position on what constitutes valid sources for determining clearly established law.

Moreover, the decision below shows just how far astray qualified immunity doctrine has wandered from section 1983's birth in the 1871 Civil Rights Act. That statute, silent as to immunity, see App.255a, is now interpreted to provide the same level of qualified immunity to any state actor, regardless of whether

they enjoyed common law immunity in 1871. But as Justice Thomas has repeatedly urged, this Court should not apply a one-size-fits-all approach to the judicially invented doctrine of section 1983 qualified immunity when the Court can instead look to history to determine that immunity's scope and application.

The importance of these issues warrants granting the petition. Multiple Justices have now recognized that state actors "purposefully interfer[ing] with parents' access to critical information about their children's gender-identity choices and [state actors'] involvement in and influence on those choices" are both "troubling *** and tragic." *Lee* v. *Poudre Sch. Dist. R-1*, 146 S.Ct. 26, 2025 WL 2906469, *1 (2025) (statement by Alito, J., joined by Thomas & Gorsuch, JJ., respecting denial of certiorari). These Justices are rightly "concerned that some federal courts are 'tempted' to avoid confronting a 'particularly contentious constitutional question': whether a [state actor] violates parents' fundamental rights 'when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process.'" *Ibid.* (cleaned up) (quoting *Parents Protecting Our Child., UA* v. *Eau Claire Area Sch. Dist.*, 145 S.Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari)).

The qualified immunity holding in this case exemplifies that very concern, which these Justices deem to be of "great and growing national importance." *Ibid.* (quoting *Parents Protecting*, 145 S.Ct. at 14). Accordingly, the petition should be granted.

OPINIONS BELOW

The memorandum opinion of the United States Court of Appeals for the Ninth Circuit is not published but is available at 2025 WL 2965766 and reproduced in Appendix A (App.1a-9a).

The district court's order granting defendants' motions to dismiss Hudacko's second amended complaint is not published but is available at 2024 WL 4894292 and reproduced in Appendix B (App.10a-46a).

The district court's judgment entering judgment in favor of the defendants is not published. It is reproduced in Appendix C (App.47a).

The district court's order granting in part and denying in part defendants' motions to dismiss Hudacko's original complaint is not published but is available at 2024 WL 3908113 and reproduced in Appendix D (App.48a-92a).

The Ninth Circuit's order denying Hudacko's petition for rehearing and rehearing *en banc* is published at 168 F.4th 1245 and reproduced in Appendix E (App.93a-94a).

JURISDICTION

The Ninth Circuit's opinion issued on October 21, 2025. App.1a-9a. Hudacko's petition for rehearing or rehearing *en banc* was denied on March 11, 2026. App.93a-94a. Justice Kagan granted Hudacko's timely request for a 59-day extension to file this petition—to August 7, 2026. No. 25A1345. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

A. Legal Background

This petition directly implicates qualified immunity doctrine but, given the nature of that doctrine, also indirectly implicates Fourteenth Amendment parental rights.

1. The Fourteenth Amendment protects a parent's right to direct his child's medical care.

For nearly a half century, this Court has recognized the parental right to direct their children's mental health care, noting that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment." *Parham* v. *J.R.*, 442 U.S. 584, 603 (1979). Thus, "[p]arents can and must make those judgments." *Ibid.* And for over a century this Court has recognized that "[u]nder long-established precedent, parents—not the State—have primary authority with respect to 'the upbringing *** of children.'" *Mirabelli* v. *Bonta*, 607 U.S. 492, 497 (2026) (per curiam) (quoting *Pierce* v. *Society of Sisters*, 268 U.S. 510, 534-535 (1925); citing *Meyer* v. *Nebraska*, 262 U.S. 390, 399-400 (1923)). Further,

"[t]he right protected by these precedents includes the right not to be shut out of participation in decisions regarding their children's mental health." *Mirabelli*, 607 U.S. at 497 (citing *Parham*, 442 U.S. at 602). This Court has also correctly recognized that "[g]ender dysphoria is a condition that has an important bearing on a child's mental health." *Ibid.* See also *id.* at 499 (Barrett, J., concurring, joined by Roberts, C.J., and Kavanaugh, J.) ("[T]he doctrine of substantive due process has long embraced a parent's right to raise her child, which includes the right to participate in significant decisions about her child's mental health.").

Thus, when "California's policies conceal [a child's gender dysphoria] from parents and facilitate a degree of gender transitioning," this Court found in the context of a preliminary injunction that "[t]hese policies likely violate parents' rights to direct the upbringing *** of their children." *Id.* at 497. See also *id.* at 499 (Barrett, J., concurring) ("California's nondisclosure policy thus quite obviously excludes parents from highly important decisions about their child's mental health, and is unlikely to satisfy heightened scrutiny." (citation omitted)).

2. Qualified immunity's clearly established-law test.

For a section 1983 claim to withstand a defense of qualified immunity, this Court has held that a government "official [must have] violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Carroll* v. *Carman*, 574 U.S. 13, 16 (2014) (per curiam). And, "[t]o find that a right is clearly established, courts *generally* need to identify a case where an officer acting under

similar circumstances was held to have violated the Constitution." *Zorn* v. *Linton*, 146 S.Ct. 926, 930 (2026) (per curiam) (emphasis added) (cleaned up).

Moreover, "the determination whether [government officers' actions were] objectively legally reasonable *** will often require examination of the information possessed by [those] officials." *Anderson* v. *Creighton*, 483 U.S. 635, 641 (1987). So, in determining whether a constitutional right is clearly established for qualified immunity, courts must consider whether "any reasonable official *in the defendant's shoes* would have understood that he was violating it." *Plumhoff* v. *Rickard,* 572 U.S. 765, 778-779 (2014) (emphasis added) (citing *Ashcroft* v. *al-Kidd,* 563 U.S. 731, 741-742 (2011)).

B. Factual Background

Just over seven years ago, Hudacko's then-wife (Respondent Underhill) told him she was leaving him and that their 15-year-old son was "transgender." App.179a.[2] Surprised at the first bit of news, Hudacko was dumbfounded at the second—his son had shown no signs that he was not completely comfortable as a boy. App.178a. Nor was Hudacko some unobservant, absentee parent, having coached his son's baseball teams and researched music conservatory programs for him, given his piano ability. See App.174a.

As the divorce progressed to a custody determination, little did Hudacko know that the family law judge handling the matter had an adult transgender son of her own, App.177a, 185a-186a, and

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[2] The *City Journal* article uses a pseudonym for Hudacko's son. App.191a.

that later—with one of the named Respondents here—she would train others on how to promote transgender rights in family courts, App.112a-114a. When the judge asked Hudacko whether he accepted his son's transgenderism, as though it was beyond dispute, and Hudacko expressed doubt as to that diagnosis and the lack of data supporting treatment, App.172a-176a, the judge ultimately stripped Hudacko of all custody rights concerning his son except one. App.5a, 133a, 150a.[3]

That one remaining vestige of his constitutional right to direct his child's upbringing was that "any gender identity related surgery" could not be performed on their son while still a minor without Hudacko's written consent or an order from the family court. App.115a-116a, 152a (emphasis omitted). Otherwise, Hudacko's ex-wife could make all medical and other decisions for their son, App.115a, 150a-153a; including whether to accept Respondent UCSF's recommendation regarding "hormone therapy," App.116a, 152a. (UCSF was the only authorized

[3] The California family court judge's interrogation of Hudacko's beliefs related to gender identity and transgenderism bordered at times on the bizarre and the unconstitutional. As to the latter, the judge asked Hudacko—who "isn't a particularly devout Episcopalian"—"do you think that being transgender is a sin?" App.172a-176a. As to the bizarre, she asked Hudacko if he would affirm his son if he thought he was "the Queen of England." App.172a-173a. And the judge's questioning was at times the very definition of leading: "But you probably think that [your child], if they are truly transgender, you would prefer that [your child] not be transgender because in our society transgender people are the subject of a lot of discrimination. Would you agree with that?" App.174a.

provider of "hormone therapy" in the court order). App.152a.

Hudacko pleaded that UCSF had requested and received from his ex-wife the court order prohibiting any gender identity related surgery without his consent, as he learned in a September 29, 2020 email from his ex-wife. App.117a-118a, 157a. Suspicious, a few weeks later Hudacko wrote an email to the state medical defendants, the court-appointed attorney for his son, his ex-wife, and her attorney, requesting access to his child's medical records and reminding them of the contents of the court order. App.118a, 245a-253a. That same email made clear that he did not consent to any gender identity "treatment" for his son. App.118a-119a, 245a-254a. The state defendants received the letter. App.119a. Thus, state defendants were on notice no later than late September 2020 regarding the court order and no later than October 2020 regarding Hudacko's lack of consent.

But Respondents did not care. They include the state actors who were doctors involved in the surgery (Rosenthal and Lee), the state clinical psychologist who recommended the surgery (Ehrensaft),[4] the state institution responsible for these actors (Regents of the University of California), the attorney of the state institution (Orr), the court-appointed attorney for the

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[4] Rosenthal, Lee, and Ehrensaft are members of WPATH (World Professional Association for Transgender Health). App.101a-102a. And "[r]ecent revelations suggest that WPATH[] *** bases its guidance on insufficient evidence and allows politics to influence its medical conclusions." *United States* v. *Skrmetti*, 605 U.S. 495, 543 (2025) (Thomas, J., concurring); see also *id.* at 545-546 (citation omitted).

minor child (Harkins), Hudacko's ex-wife (Underhill), and her attorney (Bigger). App.101a-104a.

Without seeking permission from Hudacko or the family court, Respondents arranged for the minor son to have a cross-sex hormone-dispensing surgical implant procedure (Supprelin), in conjunction with oral estrogen hormone therapy. App.123a, 124a, 159a, 160a, 170a, 196a-235a, 238a-239a. Aware of the permanent consequences of the surgery—sterilization—Respondent Underhill caused the minor child to deposit sperm into a sperm bank. App.120a-121a, 236a-237a. The surgery was initially delayed, with Respondents' June 2021 medical notes observing that the "father is not supportive of [his son's] gender care." App.121a-123a, 169a-171a. Those notes indicated that Hudacko's ex-wife, her attorney, the state defendant attorney, the court-appointed attorney for the minor child, in short, "everyone is working together to achieve resolution in [the] near future"—everyone but Hudacko. App.121a-123a, 171a.

Finally, without Hudacko's knowledge or consent, the surgery was performed in August 2021, App.123a, 160a, 192a-195a, 239a, nearly a year after Respondents knew about the court order and Hudacko's lack of consent, App.118a-119a, 157a-159a, 245a-254a. Hudacko would definitively learn of the surgery only after he received a quarterly statement from his insurance provider with a bill for over $209,000 for "surgery," App.239a, asked his son's court-appointed counsel about it, App.240a-243a, and received confirmation that the surgery had occurred in an October 2021 email from Respondent Underhill.

App.118a-119a, 124a, 129a, 239a, 243a-244a. He subsequently filed suit in federal court.

C. Procedural History

In October 2023, Hudacko, a *pro se* plaintiff at that time, filed his initial complaint against Respondents here: the two state doctors responsible for the surgery, the state psychologist who recommended it, the state attorney who worked to bring the surgery about, the state entity responsible for these actors, the court-appointed attorney for his son, his ex-wife, and her attorney. And his first amended complaint was filed, also *pro se*, one week later. Following motions to dismiss by all defendants, Hudacko hired counsel (not his current counsel) to assist with his lawsuit.

In August 2024, the district court (Judge Susan Illston) granted in part, and denied in part, the defendants' motions to dismiss. App.48a-92a. The court also instructed Hudacko to file a second amended complaint within ten days, App.92a, which he did on August 30, 2024, App.95a-143a. Of importance to this petition, the court denied "[t]he motions to dismiss the section 1983 substantive due process claim *** as to Orr, Lee, Ehrensaft, and Rosenthal in their individual capacities." App.92a. But in the very next sentence, the district court gave defendants a suggestion to raise an argument they had previously ignored: "However, these defendants may raise qualified immunity defenses in subsequent proceedings." *Ibid*. Respondents took the hint and sought dismissal of Hudacko's constitutional parental

rights claim under section 1983 on qualified immunity grounds.

In Hudacko's second amended complaint, he clearly pleaded the background above, and he attached exhibits backing up his pleading, App.144a-254a.[5] The Second Amended Complaint noted that the family court order did not define "surgery" or "hormone therapy," App.116a, but Hudacko clearly pleaded that the implants were surgery, App.96a, 97a, 99a, 100a, 102a-104a, 107a, 116a-117a, 119a-123a—and that Respondents knew it, App.115a, 126a-129a—relying on California's statutory definition of the term (Cal. Bus. & Prof. Code §3041), a Merriam-Webster Dictionary definition, the prescribing information of the company that makes the implant (which states that the "[i]nsertion of the Supprelin LA implant is a surgical procedure"), the Respondents' vast experience with this type of surgery, and USCF's own bill, which billed the medical act to Hudacko's insurance as "surgery," App.117a, 160a, 196a-235a, 202a. And that complaint also clearly pleaded that Respondents knew of the court order that any gender-identity related surgery required Hudacko's consent or a court order and that he did not provide such consent. App.115a, 118a-119a, 121a-122a, 135a, 136a, 138a.

The district court granted defendants' motions to dismiss the section 1983 substantive due process parental rights claim on qualified immunity grounds

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[5] Because the petition "arises from a motion to dismiss," the facts in the Second Amended Complaint are presented, and must be accepted, as true. *Anza* v. *Ideal Steel Supply Corp.*, 547 U.S. 451, 453 (2006).

under Federal Rule of Civil Procedure 12(b)(6). App.34a-39a. In doing so, the court determined that neither the parental right "in custody and control of [one's] children, which encompasses the right to make medical decisions for the child," nor "the family right to association, which includes a right for parents and children to be together when a child receives medical care" were implicated in the case. App.37a. And the court determined that, given the court order allowing hormone therapy but requiring Hudacko's consent for "gender identity related surgery," reasonable state actors could have believed the implant was therapy rather than surgery, thus triggering qualified immunity. App.35a-36a, 38a-39a.

On appeal, the Ninth Circuit panel affirmed. App.2a. Spending only ten sentences on its qualified immunity analysis, the panel correctly noted that Hudacko still maintained his constitutional parental rights as to "'any gender identity related surgery,' which required [his] consent." App.5a. But the Ninth Circuit determined that, from the perspective of "a reasonable person" and what they would have known, App.4a (quoting *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982)), "it was not clear the implant procedure fell within [the] 'surgery' exception in the custody order," App.5a. The panel further observed that "Hudacko cites no clearly established law creating a parental liberty interest in precluding the procedure at issue here when the other parent and minor child consent to it." *Ibid.* For that proposition, the Ninth Circuit relied on and quoted from *Carroll* v. *Carman*, 574 U.S. 13, 16 (2014) (per curiam) ("[E]xisting precedent must have

placed the statutory or constitutional question beyond debate."). App.4a-5a.

Hudacko petitioned for panel and *en banc* review, and while "[a] judge requested a vote on whether to rehear the matter en banc," it failed to receive a majority of votes. Hudacko's petition was denied. App.93a-94a.

REASONS FOR GRANTING THE PETITION

This petition presents a question that multiple Justices have recognized is one of national importance—lower courts misreading this Court's precedent to avoid reaching the merits of contentious constitutional issues in the area of parental rights. And lower courts are profoundly split on what a court may look to in determining what is clearly established law. Additionally, this case presents an opportunity to align qualified immunity doctrine more fully with the text of and history surrounding section 1983. Finally, since the underlying action was dismissed at the pleading stage, the petition presents a clean and narrow vehicle to decide these issues.

I. This Petition Presents an Issue that Multiple Justices Have Recognized as a "Question of Great and Growing National Importance."

At least four Justices agree that the underlying merits issue here presents a "question of great and growing national importance." *Parents Protecting Our Child., UA* v. *Eau Claire Area Sch. Dist.*, 145 S.Ct. 14, 14 (2024) (Alito, J., dissenting from denial of certiorari). In his dissent in *Parents Protecting*, Justice Alito, joined by Justice Thomas, declared that "when,

without parental knowledge or consent, [the government] encourages a [minor] to transition to a new gender or assists in that process," this "presents a question of great and growing national importance." *Ibid.*[6] That is exactly what happened here.

In that dissent, moreover, Justices Alito and Thomas noted the lower court's "questionable understanding of *Clapper* [v. *Amnesty International USA,* 568 U.S. 398 (2013),] and related standing decisions"—where the lower court held that parents lacked standing to challenge a government policy facilitating transitioning without parental knowledge or consent. *Parents Protecting,* 145 S.Ct. at 14 (Alito, J., dissenting from denial of certiorari). These Justices expressed concern "that some federal courts are succumbing to the temptation to use the doctrine of Article III standing as a way of avoiding some particularly contentious constitutional questions." *Id.* at 14-15. And as important as it is to "heed the limits of [courts'] constitutional authority," it is "equally important" that courts "carry out their 'virtually unflagging obligation *** to exercise the jurisdiction given them.'" *Id.* at 15 (quoting *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976)).

Justice Alito, joined by Justice Thomas and Justice Gorsuch, reiterated these concerns in *Lee* v. *Poudre School District R-1*, 146 S.Ct. 26, 2025 WL 2906469 (2025) (Alito, J., statement respecting denial of certiorari). There these Justices emphasized their

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[6] Justice Kavanaugh would have granted the petition in *Parents Protecting Our Children, UA* v. *Eau Claire Area School District.* See 145 S.Ct. 14, 14 (2024).

"concern[] that some federal courts are 'tempted' to avoid confronting a 'particularly contentious constitutional question': whether [the government] violates parents' fundamental rights 'when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process.'" *Id.* at *1 (cleaned up) (quoting *Parents Protecting*, 145 S.Ct. at 14 (Alito, J., dissenting)).

These Justices also noted that government entities with "policies *** that purposefully interfere with parents' access to critical information about their children's gender-identity choices and [government] personnel's involvement in and influence on those choices" are both "troubling *** and tragic." *Ibid.* And they viewed the question presented by petitioners—"[w]hether [the government] may discard the presumption that fit parents act in the best interests of their children and arrogate to itself the right to direct the care, custody, and control of their children," Pet. at i, *Lee* v. *Poudre Sch. Dist. R-1,* 146 S.Ct. 26 (2025) (No. 25-89)—as a question of "great and growing national importance." *Lee*, 2025 WL 2906469, *1 (Alito, J., statement) (quoting *Parents Protecting,* 145 S.Ct. at 14 (Alito, J., dissenting)).

That same concern in a similar context—misreading the Court's "[qualified immunity] decisions" to "avoid[] [the] particularly contentious constitutional questions" of whether the state can encourage or assist the gender transitioning of minors "without parental knowledge or consent"—is the fundamental problem here. *Parents Protecting,* 145 S.Ct. at 14-15 (Alito, J., dissenting); see also *Lee*, 2025 WL 2906469, *1 (Alito, J., statement). After all, qualified immunity, like standing, enables courts to

avoid the merits of constitutional parental rights claims, as occurred below.

That is because this Court, for over four decades, has consistently characterized qualified immunity as "an immunity from suit rather than a mere defense to liability." *Plumhoff*, 572 U.S. at 771-772 (quoting *Pearson* v. *Callahan*, 555 U.S. 223, 231 (2009) in turn quoting *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (1985)). And therefore, "[q]ualified immunity, similar to absolute immunity, is an entitlement not to stand trial under certain circumstances." *Mitchell*, 472 U.S. at 512. Not surprisingly, then, some federal courts have compared the functional equivalence of standing and qualified immunity doctrines, finding they both "limit judicial elaboration of the contours of constitutional rights." *MacIssac* v. *Town of Poughkeepsie*, 770 F. Supp. 2d 587, 600 n.7 (S.D.N.Y. 2011). And that is because, given this Court's decision in *Pearson*, courts analyzing qualified immunity may reach only whether a constitutional right was clearly established without having to decide whether that right was violated. 555 U.S. at 236. Thus, standing and qualified immunity can both similarly "tempt" federal courts "to avoid confronting a 'particularly contentious constitutional question': whether [the government] violates parents' fundamental rights 'when, without parental knowledge or consent, it encourages a student to transition to a new gender or assists in that process.'" *Lee,* 2025 WL 2906469, *1 (Alito, J., statement) (cleaned up) (quoting *Parents Protecting*, 145 S.Ct. at 14 (Alito, J., dissenting)).

This Court's review is necessary to avoid this "troubling *** and tragic" national trend. *Ibid.*

II. In Affirming Qualified Immunity, the Ninth Circuit Acted In Tension with This Court's Precedent and Cemented a Deep Circuit Split on What Materials Are Relevant to Determining Clearly Established Law.

By solely looking to judicial precedent to determine whether clearly established law had been violated, the Ninth Circuit acted not only in tension with this Court's precedent, but directly in conflict with at least seven other circuits—by adopting the minority view in a split involving all the circuits. And, had the Ninth Circuit followed the majority view, it would not have dismissed Hudacko's section 1983 claim on qualified immunity grounds.

A. This Court's precedent requires courts to examine the "information possessed" by the state actor and to perform the analysis from the perspective of an "official in the defendant's shoes" in determining whether clearly established law was violated.

As this Court noted earlier this year, "[t]o find that a right is clearly established, courts *generally* need to identify a case where an officer acting under similar circumstances was held to have violated the Constitution." *Zorn*, 146 S.Ct. at 930 (emphasis added) (cleaned up). But "generally" does not mean "always,"[7] thus leaving the door open to the examination of other materials for the clearly established-law analysis.

[7] See *Generally,* Merriam-Webster Online Dictionary (defined as meaning "usually"), https://www.merriam-webster.com/dictionary/generally (last visited Aug. 3, 2026).

This is consistent with this Court's observation that an "examination of the *information possessed* by [state actors claiming qualified immunity]" is appropriate. *Anderson*, 483 U.S. at 641 (emphasis added). Moreover, the proper perspective is whether "any reasonable official *in the defendant's shoes* would have understood that he was violating [the law]." *Plumhoff,* 572 U.S. at 778-779 (2014) (emphasis added) (citing *al-Kidd*, 563 U.S. at 741-742). The information an official possessed and the perspective from "the defendant's shoes" includes more than just the case law they knew.

Thus, in *Hope* v. *Pelzer*, 536 U.S. 730, 744 (2002), this Court concluded that state actors "violated clearly established law," which conclusion was "buttressed by the fact that the [Department of Justice] specifically advised the [state department of corrections] of the unconstitutionality of its practices before the incidents in this case took place." Likewise, in *Groh* v. *Ramirez*, 540 U.S. 551, 564 (2004), "the guidelines of [the state actor's] own department placed him on notice that he might be liable for [violating clearly established law]."

It this therefore hard to square what the Ninth Circuit did below with this precedent. Relying on the per curiam decision in *Carroll* v. *Carman* that "existing precedent must have placed the statutory or constitutional question beyond debate," 574 U.S. at 16 (quoting *al-Kidd*, 563 U.S. at 741), the panel faulted Hudacko for failing to cite case law "under similar facts." App.5a. And thus, the panel ignored Hudacko's pleading that the procedure was surgery, that the defendants knew it was, and that the defendants knew about the court order and that he did not consent, for which Hudacko relied on non-precedential law

(California law and the custody order) and medical information possessed by the defendants.

Admittedly, though, "the Supreme Court's commentary on whether non-caselaw sources[] *** can be considered clearly established law is sparse and conflicting." Eliana Fleischer, *Stating the Obvious: Departmental Policies As Clearly Established Law*, 90 U. Chi. L. Rev. 1435, 1443 (2023). Not surprisingly, then, lower courts are fractured on the issue. See, *e.g.*, John F. Preis, *Qualified Immunity & Subjective Knowledge*, 60 Wake Forest L. Rev. 627, 674 (2025) ("An issue that is currently unsettled in the circuit courts is whether a department's internal policies or trainings are relevant to qualified immunity.").

B. Five Circuits look only to judicial decisions as valid interpretive sources of clearly established law.

On one end of the spectrum in this lower court confusion is the Ninth Circuit with four other circuits, which take an exceedingly narrow approach to the types of materials that can be examined for determining clearly established law. For example, the Tenth Circuit has emphatically declared that "judicial decisions are the *only* valid interpretive source of the content of clearly established law." *Frasier* v. *Evans*, 992 F.3d 1003, 1015 (10th Cir. 2021) (emphasis added). See also *ibid.* ("[W]hatever training the officers received concerning the nature of [the plaintiff's] First Amendment rights was irrelevant to the clearly-established-law inquiry.").

Likewise, and taking an even narrower view, the Fifth Circuit not only requires judicial precedent to be the sole valid interpretive source for determining

clearly established law, that circuit prohibits looking to non-precedential opinions. *Salazar* v. *Molina*, 37 F.4th 278, 286 (5th Cir. 2022) ("Because nonprecedential opinions do not establish any binding law for the circuit, they cannot be the source of clearly established law for qualified immunity analysis." (citation omitted)). The D.C. Circuit is also part of this minority, looking only to judicial precedent to determine clearly established law. See, *e.g.*, *Bernier* v. *Allen*, 38 F.4th 1145, 1152 (D.C. Cir. 2022) ("Qualified immunity may be unavailable when plaintiffs identify cases of controlling authority in their jurisdiction at the time of the incident or a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful." (cleaned up)). See also *Youngbey* v. *March*, 676 F.3d 1114, 1116, 1117 (D.C. Cir. 2012) (per curiam) ("Since we have found neither controlling precedent of the Supreme Court or this circuit, nor a consensus of persuasive authority from our sister circuits, we must reverse" the district court's denial of qualified immunity). And the Seventh Circuit also appears to take the minority position. See *Reed* v. *Palmer*, 906 F.3d 540, 547 (7th Cir. 2018) (describing the circuit's progression of first looking to Supreme Court and circuit precedent, then to "all relevant caselaw," but not mentioning the option of looking to non-case law or other types of law).

Thus, in these five circuits, courts may not examine any other type of law besides judicial precedent for determining whether clearly established law was violated. This position smacks of judicial hubris given that the role of federal courts is to interpret law, not make it. See, *e.g.*, *Danforth* v. *Minnesota*, 552 U.S. 264, 290 (2008) ("[O]ur normal

role is to interpret law created by others and 'not to prescribe what it shall be.'" (quoting *American Trucking Ass'ns, Inc.* v. *Smith*, 496 U.S. 167, 201 (1990) (Scalia, J., concurring in judgment)). And, in any event, case law doesn't exhaust the universe of law binding government actors.

Likewise, in these five circuits nor can any non-legal materials be examined for the clearly established-law inquiry, depriving courts of the ability to look to the "information possessed" by a state actor from the perspective of someone "in [their] shoes." See *Anderson*, 483 U.S. at 641; *Plumhoff,* 572 U.S. at 778-779.

C. Seven other circuits permit consideration of non-case law sources of law and non-legal materials.

On the other end of the spectrum are those circuits that broadly define the universe of materials that may be examined to determine if clearly established law was violated. For instance, the First Circuit just last year declared that, while courts "look mainly to [judicial] precedent" for this analysis, they may also examine "certain non-case-law sources, like statutes, prison regulations, and government studies and reports." *Cintron* v. *Bibeault*, 148 F.4th 37, 51-52 (1st Cir. 2025) (citations omitted). Hence, in that case, besides judicial precedent, the court examined a report that the Rhode Island Legislature commissioned, which included expert testimony related to the alleged constitutional violation (sleep deprivation of a prisoner) to decide if clearly established law was violated. *Id*. at 52-53. See also *Irish* v. *Fowler*, 979 F.3d 65, 77 (1st Cir. 2020) ("A defendant's adherence to

proper police procedure bears on all prongs of the qualified immunity analysis.").

Likewise, the Fourth Circuit found it appropriate to deny qualified immunity given "the officers' *training* and existing case law at the time." See *Iko* v. *Shreve*, 535 F.3d 225, 241 (4th Cir. 2008) (emphasis added). See also *United States* v. *McKenzie-Gude*, 671 F.3d 452, 460-461 (4th Cir. 2011) (determining that "actual uncontroverted facts known to—as opposed to subjective beliefs held by—an officer *** are certainly relevant in the qualified immunity context, which requires courts to ascertain whether a 'reasonable officer' could have believed a search was lawful 'in light of clearly established law and the information the searching officers possessed'" (quoting *Anderson*, 483 U.S. at 641)). The Sixth Circuit has similarly determined that an officer's "violation of [department] policies" was "relevant" to the clearly established law analysis. *Latits* v. *Phillips*, 878 F.3d 541, 553 (6th Cir. 2017). See also *Barker* v. *Goodrich*, 649 F.3d 428, 436 (6th Cir. 2011) ("A defendant's deviation from normal practice and prison policies can also provide notice that his actions are improper.").

Other circuits likewise fit into this majority camp. For example, the Eighth Circuit noted in finding an officer entitled to qualified immunity that "extensive training and experience in drug interdiction made him an officer whose strong belief that he had found a controlled substance in an automobile was likely to be objectively reasonable." *New* v. *Denver*, 787 F.3d 895, 901 (8th Cir. 2015). See also *Nelson* v. *Correctional Med. Servs.*, 583 F.3d 522, 533 (8th Cir. 2009) (en banc) ("The ADC administrative regulations in effect also reflected the

constitutional protections recognized in these judicial decisions."). Similarly, the Second Circuit concluded that "[t]he officers' failure to comply with their training and the relevant state law, provides strong support for the conclusion that the officers should have been aware of the wrongful character of their conduct." *Okin* v. *Village of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 437 (2d Cir. 2009). The Third Circuit also allows examination of non-case law materials for the clearly established-law analysis, such as a government report that included not only judicial precedent but also "case studies, and statistics." *Williams* v. *Secretary Pa. Dep't of Corr.*, 117 F.4th 503, 520 (3d Cir. 2024), *cert. denied sub nom. Wetzel* v. *Williams*, 146 S.Ct. 91 (2025).

Perhaps most relevant to this petition, in the context of qualified immunity for state medical personnel, the Eleventh Circuit has determined that "the defendant's actions are evaluated based on the law established in earlier court decisions *and* contemporary medical standards, and in the light of the information possessed by the official at the time the conduct occurred." *Kruse* v. *Williams*, 592 F. App'x 848, 855-856 (11th Cir. 2014) (per curiam) (emphasis added) (cleaned up). See also *Adams* v. *Poag*, 61 F.3d 1537, 1543 (11th Cir. 1995) ("In a medical treatment case, a plaintiff may demonstrate the existence of a clearly established medical standard either through reference to prior court decisions or to the contemporary standards and opinions of the medical profession.").

Thus, depending on which circuit one lives in, the qualified immunity analysis looks much different.

D. Had the Ninth Circuit followed the majority approach, it could not have granted Respondents' motions to dismiss.

Unfortunately for Hudacko, he lives in the Ninth Circuit with its minority view that only case law may be examined to determine clearly established law. Had he lived in one of the other seven circuits discussed above, the court could not have dismissed his complaint at the pleading stage on qualified immunity.

That is because Hudacko clearly alleged that, under California law defining "surgery" or the dictionary definition of that term, the court order's reference to surgery covered the implant procedure performed on his son.[8]

But that's not all. Hudacko also plainly alleged that, based on Respondents' experience performing this surgery (which would include their training and any manuals or department policies related to it), the manufacturer's description of the implant procedure, and Respondent UCSF's own description of the procedure as "surgery" in its bill, Respondents knew this was surgery. And Hudacko also alleged that Respondents knew he had not consented to it.[9]

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[8] This Court could take a middle position between the circuits, allowing other law but not non-legal materials to be considered in the clearly established law analysis. That middle ground would also mean Hudacko would defeat qualified immunity at the pleading stage.

[9] The panel faulted Hudacko for "cit[ing] no clearly established law creating a parental liberty interest in precluding the

This should have made the analysis simple at the motion-to-dismiss stage. Hudacko raised Supreme Court and circuit precedent that he has a Fourteenth Amendment right to direct his child's medical care. See App.131a-132a. Based on the court order, he maintained his right to exercise such direction in the specific context of "any gender identity related surgery." App.115a-116a, 152a. And Hudacko pleaded that Respondents knew what they were doing was a type of surgery based on non-case law materials and they purposefully performed the surgery without seeking his permission, knowing they were required to obtain it. App.115a-119a, 126a-129a. His section 1983 claim, then, would have easily survived a Rule 12(b)(6) motion on qualified immunity grounds.

The ability to raise constitutional claims against state actors in federal court should not depend on one's address. Only this Court can bring uniformity to the lower courts on this important issue.

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procedure at issue here when the other parent and minor child consent to it." App.5a. But that ignores his pleadings and the court order regarding gender-identity related surgery. It did not matter under the order that the "other parent and minor child consent[ed] to [the surgery]," *ibid.*, because Hudacko's consent was also plainly required, App.115a, 152a. Thus, based on the order, Hudacko had full veto authority for this type of surgery and his ex-wife's or child's consent could not override that. He thus maintained all of his constitutional rights to direct medical care for his child in this limited context, and he cited case law showing that the parental right to do so is clearly established. That should have been sufficient.

III. The Court Should Use This Opportunity to Return to its Prior Practice of Requiring a Threshold Historical Inquiry as Part of the Qualified Immunity Determination.

This case not only gives this Court an opportunity to resolve a mature circuit split, it also provides an opportunity to return the entire qualified-immunity doctrine to its proper scope. Repeated criticisms of the ahistorical nature of modern qualified immunity doctrine can be answered by reverting to previous precedent—and the identical current practice in absolute immunity cases. That precedent requires a threshold historical inquiry into whether a state actor enjoyed common-law immunity when section 1983 was enacted. Adopting that historical test would allow the Court to avoid a one-size-fits-all test, maintaining robust qualified immunity for state actors, like law enforcement, who can show historical immunity, but adopting a more relaxed standard based on *Hope* v. *Pelzer* for state actors lacking an historical pedigree of immunity. And that distinction is decisive here because state-employed medical personnel did not traditionally enjoy common-law immunity.

A. Multiple Justices have criticized modern qualified immunity doctrine for straying far from its historical roots.

For over three decades, Justices of this Court have criticized the ahistorical nature of qualified immunity doctrine. For example, Justice Kennedy stated that this Court's absolute "immunity doctrine is rooted in historical analogy, based on the existence of common-law rules in 1871," but that "[i]n the context of qualified immunity for public officials" the Court

has "diverged to a substantial degree from the historical standards." *Wyatt* v. *Cole*, 504 U.S. 158, 170 (1992) (Kennedy, J., concurring). And Justice Kennedy pointed to this Court's decision in *Harlow* v. *Fitzgerald*, 457 U.S. 800 (1982), as having "depart[ed] from history in the name of public policy, reshaping immunity doctrines in light of those policy considerations."[10] *Wyatt*, 504 U.S. at 171 (Kennedy, J., concurring). See also *Anderson*, 483 U.S. at 645 (admitting that *Harlow* "completely reformulated qualified immunity along principles not at all embodied in the common law").

Justice Scalia, joined by Justice Thomas, would likewise admit that the Court's "treatment of qualified immunity under 42 U.S.C. §1983 has not purported to be faithful to the common-law immunities that existed when §1983 was enacted, and that the statute presumably intended to subsume." *Crawford-El* v. *Britton*, 523 U.S. 574, 611 (1998) (Scalia, J., dissenting). See also *Burns* v. *Reed*, 500 U.S. 478, 498 n.1 (1991) (Scalia, J., concurring in part and dissenting in part) (noting that in *Harlow* and *Anderson*, the Court "extended [§1983] qualified immunity beyond its scope at common law").

But perhaps most consistently and thoroughly, Justice Thomas has declared that "the doctrine of qualified immunity for executive officials[] *** ha[s] diverged from the historical inquiry mandated by the statute." *Ziglar* v. *Abbasi*, 582 U.S. 120, 158-159

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[10] Justice Kennedy noted that the policy concern that gave rise to the Court's departure from historical standards—the summary judgment standard—has since been "alleviated." *Wyatt* v. *Cole*, 504 U.S. 158, 171 (1992) (Kennedy, J., concurring).

(2017) (Thomas, J., concurring in part and in judgment). Hence, "[t]he 'scant resemblance' between §1983 today and §1983 as it was traditionally understood creates good reason to doubt our modern understanding." *Medina* v. *Planned Parenthood S. Atl.*, 606 U.S. 357, 391 (2025) (Thomas, J., concurring) (quoting *Crawford-El*, 523 U.S. at 611 (Scalia, J., dissenting)). "After all," he noted, "a statute's meaning turns on what its words 'conveyed to reasonable people at the time they were written.'" *Ibid.* (quoting Antonin Scalia & Bryan Garner, *Reading Law* 16 (2012)). So he warned the Court that, "[u]ntil we shift the focus of our inquiry to whether immunity existed at common law, we will continue to substitute our own policy preferences for the mandates of Congress." *Ziglar,* 582 U.S. at 160 (Thomas, J., concurring).[11] And, "[t]o ensure that we are not elevating demonstrably erroneous decisions over duly enacted federal law, we should in appropriate cases revisit the proper bounds of §1983." *Medina*, 606 U.S. at 391 (Thomas, J., concurring) (cleaned up).

This is that case.

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[11] See also *Malley* v. *Briggs*, 475 U.S. 335, 342 (1986) ("[O]ur role is to interpret the intent of Congress in enacting §1983, not to make a freewheeling policy choice, and that we are guided in interpreting Congress' intent by the common-law tradition."); William Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 45 (2018) (describing "qualified immunity doctrine" as "inconsistent with conventional principles of statutory interpretation"); Tyler B. Lindley, *Anachronistic Readings of Section 1983*, 75 Ala. L. Rev. 897, 902 (2024) (noting the inconsistency between modern qualified immunity doctrine and section 1983's original meaning).

1. Relevant here are two of Justice Thomas' specific critiques. First, he observed that "[t]here likely is no basis for the objective inquiry into clearly established law that our modern cases prescribe." *Baxter* v. *Bracey*, 590 U.S. 1011, 1013 (2020) (Thomas, J., dissenting from denial of certiorari). That is because "the Court adopted the [clearly established law] test not because of 'general principles of tort immunities and defenses,' but because of a 'balancing of competing values' about litigation costs and efficiency." *Id*. at 1014 (quoting first *Malley*, 475 U.S. at 339, and then *Harlow*, 457 U.S. at 816). See also *id*. at 1013-1014 ("Leading treatises from the second half of the 19th century and case law until the 1980s contain no support for this 'clearly established law' test."). Thus, "[w]e have not attempted to locate that standard in the common law as it existed in 1871." *Ziglar*, 582 U.S. at 159 (Thomas, J., concurring). Instead, "[w]e apply this 'clearly established' standard 'across the board' and without regard to 'the precise nature of the various officials' duties or the precise character of the particular rights alleged to have been violated.'" *Ibid.* (quoting *Anderson*, 483 U.S. at 641-643).

This Court may address this historical aberration through this petition's first question presented.

2. Justice Thomas has also pointed out that "[t]here also may be no justification for a one-size-fits-all, subjective immunity based on good faith." *Baxter*, 590 U.S. at 1014 (Thomas, J., dissenting). In other words, "the one-size-fits-all doctrine is also an odd fit for many cases because the same test applies to officers who exercise a wide range of responsibilities and functions." *Hoggard* v. *Rhodes*, 141 S.Ct. 2421,

2421 (2021) (Thomas, J., statement respecting denial of certiorari). And the Court "ha[s] never offered a satisfactory explanation to th[e] question" of "why should [state actors], who have time to make calculated choices about enacting or enforcing unconstitutional policies, receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting?" *Id*. at 2422.

As Justice Thomas recognized, "[t]his [one-size-fits-all] approach is even more concerning because our analysis is not grounded in the common-law backdrop against which Congress enacted §1983." *Ibid.* (cleaned up). Thus, he counseled, "we at least ought to return to the approach of asking whether immunity was historically accorded the relevant official in an analogous situation at common law." *Baxter*, 590 U.S. at 1014 (cleaned up). See also *Hoggard*, 141 S.Ct. at 2422 ("Whatever the history establishes, we at least ought to consider it.").

For at least three reasons, such a reconsideration would be appropriate. First, this Court's "earlier decisions on s[ection] 1983 immunities" were "predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interests behind it." *Imbler* v. *Pachtman*, 424 U.S. 409, 421 (1976).

Second, "[t]he Court has continued to conduct this inquiry in absolute immunity cases, even after the sea change in qualified immunity doctrine." *Baxter*, 590 U.S. at 1014 (citing *Burns*, 500 U.S. at 489-492). And Justice Thomas declared that "[w]e should do so in qualified immunity cases as well." *Ibid.* This would also bring the two types of immunity in parallel and

restore this Court's earlier qualified immunity analysis.

Finally, doing so would not be strange because qualified immunity doctrine already requires historical analysis: "To determine the elements of a constitutional claim under §1983, this Court's practice is to first look to the elements of the most analogous tort as of 1871 when §1983 was enacted." *Thompson* v. *Clark*, 596 U.S. 36, 43 (2022). Doing so in another context would involve a familiar mode of analysis.

The Court may address this historical deviation in the second question presented.

B. State actors who did not enjoy common-law immunity in 1871, like Respondents, should not be treated the same as state actors who did.

The state actors to whom the lower courts granted qualified immunity in this case were state doctors and a state attorney for the hospital. These actors did not historically receive common law immunity, and therefore a higher standard for obtaining qualified immunity should apply to them than state actors who enjoyed such immunity when section 1983 was enacted.

1. Any state actor who cannot show the historical pedigree of immunity should be subject to the *Hope* v. *Pelzer* standard.

It makes sense to treat state actors like Respondents here who did not historically enjoy common-law immunity differently than those who did. After all, "why should [state actors], who have time to

make calculated choices about enacting or enforcing unconstitutional policies, receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting?" *Hoggard*, 141 S.Ct. at 2422 (Thomas, J., statement respecting denial of certiorari).

1. That distinction is well illustrated in this case. There was no split-second decision facing the state defendants. In fact, they did not perform the surgery until nearly a year after they knew of the court order prohibiting it without Hudacko's consent and that he did not consent. App.117a-118a, 123a, 157a-159a, 245a-254a. To give them the same latitude under qualified immunity as law enforcement facing a "split-second decision" makes no sense today and is not supported by history.

They and other state actors lacking an historical pedigree of immunity should not be given the same treatment under qualified immunity. They should instead face a higher hurdle to successfully invoke that doctrine. Put another way, plaintiffs should face a lighter burden for defeating a qualified immunity claim. And the Court already has a doctrinal test it can turn to in *Hope*. See 536 U.S. 730.

2. The *Hope* test for clearly established law differs from this Court's more recent pronouncements. That test does not require "fundamentally similar" or even "materially similar" facts. *Hope*, 536 U.S. at 741. Rather, "officials can still be on notice that their conduct violates established law even in novel factual circumstances" so long as defendants had "fair warning that their alleged treatment of [the plaintiff] was unconstitutional." *Ibid.*

Had that been the standard below, Hudacko's section 1983 claim would have survived a motion to dismiss based on qualified immunity. And this Court relied on this standard in recent years. See *Taylor* v. *Riojas*, 592 U.S. 7, 8-9 (2020) (per curiam). See also *Tolan* v. *Cotton*, 572 U.S. 650, 656 (2014) (per curiam) (noting *Hope*'s "fair warning" element (quoting *Hope*, 536 U.S. at 741)).

But this Court has ignored *Hope* more than relying on it in section 1983 qualified immunity cases.[12] Hence, adopting the *Hope* standard for state officials who did not historically enjoy immunity will also clarify when that standard should be invoked—as lower courts are currently confused if and when to follow *Hope* compared to more recent case law's increasingly stringent standard. See, *e.g.*, *N.E.L.* v. *Douglas County*, 740 F. App'x 920, 928 n.18 (10th Cir. 2018) ("*Hope* v. *Pelzer* appears to have fallen out of favor, yielding to a more robust qualified immunity."); *Morgan* v. *Swanson*, 659 F.3d 359, 373 (5th Cir. 2011) (en banc) ("The Supreme Court's admonition in *al-Kidd* that we should not 'define clearly established law at a high level of generality' sits in tension with its earlier statement in *Hope* v. *Pelzer*."); *Villalobos* v.

[12] See, *e.g.*, *Zorn* v. *Linton*, 146 S.Ct. 926 (2026) (per curiam) (not mentioning *Hope*); *City of Tahlequah* v. *Bond*, 595 U.S. 9 (2021) (per curiam) (same); *Rivas-Villegas* v. *Cortesluna*, 595 U.S. 1 (2021) (per curiam) (same); *City of Escondido* v. *Emmons*, 586 U.S. 38 (2019) (per curiam) (same); *Kisela* v. *Hughes*, 584 U.S. 100 (2018) (per curiam) (same); *White* v. *Pauly*, 580 U.S. 73 (2017) (per curiam) (same); *Mullenix* v. *Luna*, 577 U.S. 7 (2015) (per curiam) (same); *Carroll* v. *Carman*, 574 U.S. 13 (2014) (per curiam) (same); *Stanton* v. *Sims*, 571 U.S. 3 (2013) (same); *Reichle* v. *Howards*, 566 U.S. 658 (2012) (same); *Ashcroft* v. *al-Kidd*, 563 U.S. 731 (2011) (same).

Picicco, 168 F.4th 1057, 1063 n.2 (7th Cir. 2026) ("The Supreme Court usually reserves th[e] escape hatch [of *Hope*'s standard] for egregious factual scenarios in the Eighth Amendment context.").

3. By the same token, state actors who historically enjoyed common-law immunity at the time of the adoption of section 1983 can continue to receive the protection of this Court's more recent qualified immunity doctrine. That doctrine asks a different question than *Hope*: "whether the violative nature of *particular* conduct is clearly established." *Mullenix* v. *Luna*, 577 U.S. 7, 12 (2015) (per curiam) (quoting *al-Kidd,* 563 U.S. at 742). So "[t]he relevant precedent must define the right with a 'high degree of specificity,' so that 'every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.'" *Zorn*, 146 S.Ct. at 930 (quoting *District of Columbia* v. *Wesby*, 583 U.S. 48, 63 (2018)). And "[s]uch specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine *** will apply to the factual situation the officer confronts." *Mullenix*, 577 U.S. at 12 (cleaned up).

2. Medical personnel did not historically receive immunity.

Government-employed medical personnel did not enjoy common-law immunity around the time section 1983 was adopted. Of all the circuits, the Sixth Circuit has done the deepest dive into the historical record in a case where a section 1983 suit was brought against a prison psychiatrist. See *McCullum* v. *Tepe*, 693 F.3d 696, 697 (6th Cir. 2012). First examining English common law, the court found that "it does not appear

that doctors generally enjoyed any special kind of immunity." *Id*. at 702. American case law in the years following section 1983's passage confirmed the same. *Id*. at 703-704. In short, the court could find no "indicia that a paid physician (whether remunerated from the public or private fisc) would have been immune from suit at the common law *** at the time that Congress passed §1983." *Id*. at 704.

Hence, "the precedents that do exist point in one direction: there was no special immunity for a doctor working for the state." *Id*. at 703. And this history would thus apply to the state defendants in this case.

For all these reasons, certiorari should be granted to address and resolve both of the questions presented.

IV. This is a Clean Vehicle.

Nor are there countervailing reasons for this Court to deny review. Deciding the questions presented here would allow this Court to avoid the fact-intensive analysis necessary when addressing qualified immunity's current clearly established-law prong. See *Trabucco* v. *Rivera*, 141 F.4th 720, 730 (5th Cir. 2025) ("[A]n analysis of the clearly established prong of qualified immunity is fact-intensive." (cleaned up)); *Peatross* v. *City of Memphis*, 818 F.3d 233, 244 n.6 (6th Cir. 2016) ("Qualified immunity is a fact-intensive analysis."). And resolving those issues would avoid complicated factual analysis because this case was dismissed at the pleading stage, before discovery. Hence, the Court need only read the second amended complaint and its attachments, as well as relevant case law, thus avoiding wading through an extensive record. Additionally, this Court need not decide whether Respondents receive qualified

immunity but merely determine the appropriate test and remand for its application.

What is more, the complaint and the Ninth Circuit's decision clearly raise the issues presented in the petition. As to the first question presented, Hudacko plainly pleaded that he still had his constitutional parental rights over the medical care of his son as to "any gender identity related surgery," he plainly pleaded that for multiple reasons the defendants knew they had performed surgery on his son and that this was forbidden by the custody order, and the Ninth Circuit obviously ignored these factual allegations and instead relied solely on a lack of judicial precedent.

As to the second question presented, the petition clearly raises and briefs the question, including that the government defendants did not enjoy immunity at the time section 1983 was adopted. Nor does it matter that the second question presented was not raised below—there is no need to futilely raise issues squarely foreclosed by this Court's precedent. *Carr* v. *Saul*, 593 U.S. 83, 93 (2021) ("[T]his Court has consistently recognized a futility exception" because "[i]t makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested.").

In short, this petition presents a clean, narrow vehicle to decide the questions presented.

CONCLUSION

Congress enacted section 1983 in response to Reconstruction amendments protecting Americans—and particularly those newly freed from slavery—from states infringing federal constitutional rights. Yet this Court's later development of qualified immunity doctrine, nowhere found in the statute's text, turns section 1983's civil rights protection on its head by providing more safeguards to violators of constitutional rights than to those rights themselves. Only this Court can restore the statute to its original meaning by reigning in an overly muscular qualified immunity doctrine that has severely split lower courts and frustrated constitutional rights in contexts well beyond historical applications of immunity. The petition should be granted.

Respectfully submitted,

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August 7, 2026

APPENDIX

TABLE OF APPENDICES

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* The names of minor children contained in the exhibits to the Second Amended Complaint have been replaced with "[S.H.]" and "[W.H.]." Additionally, sensitive information or information concerning other individuals has been redacted or excerpted.

Appendix A

Case: 24-7360, 10/21/2025, DktEntry: 81.1

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OCT 21 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD ALLYN HUDACKO, Plaintiff - Appellant, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET YI MAN LEE; DIANE EHRENSAFT; STEPHEN ROSENTHAL; ASAF ORR; NATHANIEL BIGGER; DANIEL HARKINS; CHRISTINE UNDERHILL, Defendants - Appellees.	No. 24-7360 D.C. No. 3:23-cv-05316-SI MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Argued and Submitted October 8, 2025
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: S.R. THOMAS, NGUYEN, and BRESS, Circuit Judges.

Edward Hudacko appeals the following orders by the district court: (1) the dismissal of his Section 1983 action against Daniel Harkins; Nathaniel Bigger; Christine Underhill; University of California San Francisco ("UCSF") doctors Janet Yi Man Lee, Diane Ehrensaft, and Stephen Rosenthal; and the UCSF Child and Adolescent Gender Center's Legal Director Asaf Orr; (2) the dismissal of his fraudulent concealment and intentional infliction of emotional distress ("IIED") claims against Dr. Lee, Dr. Ehrensaft, Dr. Rosenthal, and Orr (collectively, the "UCSF Individuals"); and (3) the denial of six of his requests for judicial notice. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.[1]

I. Section 1983 Claims

A. Harkins, Bigger, and Underhill

Only a state actor can be liable under 42 U.S.C. § 1983. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). A plaintiff may demonstrate that a private individual was a *de facto* state actor under "the joint action test" by "proving the existence of a conspiracy" or by showing that the "private party was a willful participant in joint action with the State or its agents." *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002). "To prove a conspiracy between the state and private parties under section 1983, [plaintiff] must show an agreement or meeting of the minds to violate

[1] We do not address Hudacko's withdrawn arguments that the district court judge was biased.

constitutional rights." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9th Cir. 1989) (citation modified).

The district court correctly concluded that Harkins, Bigger, and Underhill are not *de facto* state actors. Hudacko's bare assertions of a "scheme" and "joint effort," in his Second Amended Complaint ("SAC") are "formulaic recitation[s] of" the joint action test that are not entitled to the assumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 680–81 (2009); *see also In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (holding that the court is not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences").

Considering only the factual allegations in his SAC, Hudacko alleges that Harkins 1) was aware of Provision 7b of the custody order, 2) knew Hudacko opposed puberty blockers and surgical procedures, 3) excluded Hudacko from the decision regarding the implant procedure, and 4) had email exchanges and calls with other Defendants. But Hudacko does not allege that Harkins had a duty to include Hudacko in any discussions between Harkins and other defendants. Although Hudacko alleges there was a conference call between Harkins, Orr, and Bigger, the only information Hudacko cites to support his "information and belief" that the defendants discussed the "scheme" during this call is a billing record showing that Harkins had a "conference call with counsel" that lasted 0.35 hours. To allege based on that billing record that the call led to an "agreement for Defendants to perpetrate the scheme" is an

"unwarranted deduction[] of fact" at best—something we are not required to accept as true. *See In re Gilead*, 536 F.3d at 1055.

The SAC also cites UCSF's progress notes that Underhill was working with Bigger, Harkins, and Orr to "achieve resolution in the near future," but absent other facts, these notes do not in any way show an improper scheme or conspiracy to violate Hudacko's rights. There is nothing surprising or nefarious about Harkins and Bigger, as the lawyers representing Minor and Underhill respectively, working with Underhill as permitted by the custody order. Hudacko's only other factual allegation against Bigger is that the latter billed time for his legal work. Again, citing the billing for legal services as support for a claim of conspiracy is not a plausible allegation. *See Iqbal*, 556 U.S. at 678 (holding the plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully"). Nor was Underhill a *de facto* state actor, as the district court correctly explained.

B. The UCSF Individuals

The defense of qualified immunity protects "government officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "A right is clearly established only if its contours are sufficiently clear that a reasonable official would understand that what he is doing violates that right . . . [E]xisting precedent must have placed the

statutory or constitutional question beyond debate." *Carroll v. Carman*, 574 U.S. 13, 16 (2014) (citation modified).

The district court correctly concluded that the UCSF Individuals are entitled to qualified immunity because Hudacko's alleged right was not clearly established. Although the rights of parents in the "care, custody, and control of their children" is a well-established liberty interest under the Fourteenth Amendment, *Troxel v. Granville*, 530 U.S. 57, 65 (2000), Hudacko's right cannot be defined that broadly because the custody order stripped him of almost all his parental rights. Under the custody order, Underhill had sole medical decision-making authority over Minor with the exception of "any gender identity related surgery," which required Hudacko's consent.

Hudacko cites no clearly established law under similar facts. Instead, he contends that the "explicit language" of the custody order provision clearly establishes his right. But it was not clear the implant procedure fell within Provision 7b's "surgery" exception in the custody order. *See Carroll*, 574 U.S. at 16; *see also Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) ("Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions."). And putting aside the custody order, Hudacko cites no clearly established law creating a parental liberty interest in precluding the procedure at issue here when the other parent and minor child consent to it.

II. Fraudulent Concealment Claim

Under California law, one of the required elements for fraudulent concealment is that the defendant has "a duty to disclose" to the plaintiff. *Graham v. Bank of Am., N.A.*, 226 Cal. App. 4th 594, 606 (2014). Where the defendant is not in a fiduciary relationship with the plaintiff, fraudulent concealment is actionable only if there exists "some other relationship between the plaintiff and defendant in which a duty to disclose can arise." *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336–37 (1997).

Hudacko alleged no transaction or relationship with any of the UCSF Individuals that could give rise to a duty to disclose. *See Graham*, 226 Cal. App. 4th at 606. Orr was an attorney representing the UCSF Center, and his "duty of undivided loyalty" was to his client, not to Hudacko. *See LiMandri*, 52 Cal. App. 4th at 338.

Hudacko alleges that Drs. Lee, Ehrensaft, and Rosenthal (collectively, "UCSF Doctors") owed him a duty to disclose because the custody order named UCSF explicitly as Minor's medical provider and granted them "special decision-making powers." This contention is unsupported because the custody order does not grant UCSF any powers. Rather, it only conditions Underhill's authority to consent to hormone therapy for Minor on UCSF recommending that treatment. Thus, the custody order does not create a "contractual agreement" between Hudacko and UCSF

that gives rise to a duty to disclose.[2] *See LiMandri*, 52 Cal. App. 4th at 337.

III. IIED Claim

Under California law, one of the elements of a prima facie case of IIED is "outrageous conduct by the defendant." *Little v. Stuyvesant Life Ins. Co.*, 67 Cal. App. 3d 451, 461 (1977).

The custody order permits Minor "to pursue the services provided by UCSF as to [Minor's] gender identity, and shall be permitted to commence hormone therapy, if recommended by UCSF," but Minor could not obtain "any gender identity related surgery until they are 18 years of age, absent written agreement from both parties . . . or an order of the court." As we explained, the implant procedure could reasonably be interpreted to be hormone therapy and not gender identity related surgery. But even if the procedure constituted "gender identity related surgery" under the custody order, defendants' alleged conduct is not "so extreme as to exceed all bounds of that usually tolerated in a civilized society." *See Yau v. Santa Margarita Ford, Inc.*, 229 Cal. App. 4th 144, 160 (2014).

On appeal, Hudacko does not meaningfully argue that he alleged outrageous conduct required for an

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[2] Hudacko also alleges the UCSF Doctors owed him a general duty of care under Cal. Civ. Code § 1714(a), which provides that "everyone is responsible . . . for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person." That duty is limited, however, to negligence cases—not fraudulent concealment, which is governed by other provisions of California Civil Code. *See* 46 Cal. Jur. 3d Negligence § 8; 34A Cal. Jur. 3d Fraud and Deceit § 38.

IIED claim. Instead, Hudacko contends that whether the implant procedure "could reasonably [be] interpreted to be" hormone therapy was a factual dispute that should not have been decided at the pleading stage. But the district court did not decide that the implant procedure was in fact hormone therapy under the custody order. Instead, the district court only held that *even if* the implant procedure could be regarded as gender identity related surgery, the UCSF Individuals' conduct cannot be outrageous because the implant procedure "could reasonably [be] interpreted to be" hormone therapy under the custody order. *Fuentes v. Perez*, 66 Cal. App. 3d 163, 172 (1977) ("It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery.").

IV. Denial of Requests for Judicial Notice

Under Federal Rule of Evidence 201, a court may take judicial notice of an "adjudicative fact" that is "not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(a)–(b). We review a district court's decision to take judicial notice for abuse of discretion, *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458 (9th Cir. 1995), and we hold that the district court did not abuse its discretion here denying Hudacko's requests for judicial notice.

Hudacko contends that his requests were examples of "state-funded involuntary human medical

experimentation" relevant to "demonstrate 'the *plausibility* of a conspiracy to use deception in the practice of involuntary human medical experimentation,'" but these studies are not relevant here because they do not concern the "immediate parties." *See* Fed. R. Evid. 201 advisory committee's note to subdivision (a) for 1972 proposed rules.

AFFIRMED.

Appendix B

Case 3:23-cv-05316-SI Document 117
Filed: 11/25/24

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDWARD ALLYN HUDACKO, Plaintiff, v. JANET YI MAN LEE, e al., Defendants.	Case No. 23-cv-05316-SI **ORDER RE: MOTIONS TO DISMISS** Re: Dkt. Nos. 96-100

On November 15, 2024, the Court held a hearing on defendants' motions to dismiss the Second Amended Complaint ("SAC"). For the reasons set forth below, the Court GRANTS the motions to dismiss all causes of action.

BACKGROUND

Before the Court are several motions to dismiss plaintiff's Second Amended Complaint ("SAC"). Dkt. Nos. 96-100. Plaintiff filed the SAC on August 30, 2024. Dkt. No. 90 ("SAC") at 1. Plaintiff repeats many allegations from the First Amended Complaint[1] (Dkt. No. 19 ("FAC")) in the SAC against the seven remaining defendants in this case: Rosenthal

[1] The Court's previous order contains a summary of the FAC allegations. Dkt. No. 86.

(University of California, San Francisco ("UCSF") medical doctor specializing in endocrinology), Lee (UCSF medical doctor specializing in pediatric endocrinology), Ehrensaft (UCSF clinical psychologist), Orr (Legal Director of Child and Adolescent Gender Center at UCSF), Bigger (attorney representing Underhill in the family law case), Harkins (attorney representing Minor in the family law case), and Underhill (plaintiff Hudacko's ex-wife and mother of Minor). SAC ¶¶ 21-27.

In 2020, plaintiff and his ex-wife Underhill litigated a "high conflict" family law case in the Contra Costa County Superior Court. SAC ¶ 71; SAC, Ex. A at 3. A major disagreement in the case involved Underhill's belief "that [Minor][2] suffered from the psychological condition of 'gender dysphoria'" and wanted to "medically 'transition' [Minor]'s male appearance to that of a female's appearance." SAC ¶ 71. Plaintiff "opposed any form of 'gender affirming care'" for Minor, including medical transition, hormones, and/or puberty blockers. *Id.* ¶ 20. On August 26, 2020, the Contra Costa County Superior Court granted Underhill legal custody of Minor and authorized Underhill to "make decisions on her own for [Minor's] health, education and welfare without Father's consent." SAC, Ex. A at 6. The custody order includes two provisions pertaining to gender identity related medical procedures. SAC ¶ 76. Section 7a states: "[Minor] shall be permitted to pursue the services provided by UCSF as to the Minor Child's

[2] "Minor" refers to Hudacko and Underhill's oldest child who was a minor at the time of the events. The Court continues to use "Minor" for consistency with previous orders.

gender identity, and shall be permitted to commence hormone therapy, if recommended by UCSF." *Id.* Section 7b states "[Minor] will not be permitted to undergo any gender identity related surgery until they are 18 years of age, absent a written agreement by both parties, Christine Hudacko [Underhill] and Edward Hudacko, or an order of the court." *Id.* ¶ 77. Plaintiff alleges defendants violated Section 7b on August 4, 2021, when Minor underwent a Supprelin Implant procedure, listed on a bill as a "surgery."[3] *Id.* ¶ 104; SAC, Ex. D at 16.

While the SAC involves the same general events as the FAC, the SAC includes additional allegations. The new allegations center around the World Professional Association for Transgender Health ("WPATH"),[4] and what plaintiff refers to as the "True WPATH Mission," the "Playbook," and the "Scheme." SAC ¶¶ 34-35. Plaintiff alleges Rosenthal, Ehrensaft, and Lee are all members of WPATH, and Rosenthal is an elected member of WPATH's Board of Directors. *Id.* ¶¶ 6, 46, 48.

Plaintiff further alleges:

> [t]he TRUE WPATH MISSION is at least three-fold: First, by overstating the alleged risks of "untreated" gender dysphoria or gender related distress, and maximizing the profit of gender clinics by maximizing the

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[3] The Court's previous order said whether the implant was "gender identity related surgery" or "hormone therapy" will be determined on the merits, not at the pleadings stage. Dkt. No. 86 at 7.

[4] WPATH is not named as a defendant.

> number of people – especially children and adolescents – who seek "gender affirming care." Second, by falsely proclaiming psychological benefits and fraudulently concealing the known and suspected physical and mental harms caused by these procedures, maximize the number of subjects unwittingly enrolled into experimental protocols purportedly studying their long-term effects. Third, to create a population of young adults who are chronologically over 18 (thus legally able to consent to sex), but who physically, mentally and emotionally remain child-like.

Id. ¶ 45. Plaintiff alleges the members of WPATH advance the "True WPATH Mission" through the "Playbook" which includes "dishonest and/or misleading contentions and/or misrepresentations of fact, regarding the purported safety and efficacy of employing GENDER-AFFIRMING CARE on children." *Id.* ¶ 35. Plaintiff alleges all defendants were part of a "Scheme" consistent with the "Playbook" to perform surgery on Minor without Hudacko's consent. *Id.* ¶ 39. Plaintiff alleges defendants were aware of Section 7b of the custody order and agreed to conceal the plan from Hudacko as part of the "Scheme." *Id.*

The SAC also alleges plaintiff obtained a recording of a continuing legal education seminar titled "Gender and Transgender Issues" featuring defendant Orr and attended by defendant Harkins. *Id.* ¶ 58. Plaintiff alleges the seminar was intended to advance the "True WPATH Mission" by teaching

attorneys the "Playbook" so that the parent opposing a minor's gender transition "always loses." *Id.* ¶¶ 59, 66.

The FAC included seven causes of action. Dkt. No. 19 at 1. The Court's prior order dismissed all claims against the Regents of the University of California and the UCSF affiliated defendants (Orr, Lee, Ehrensaft, and Rosenthal) in their official capacities based on Eleventh Amendment immunity. Dkt. No. 86 at 29. The Court dismissed the Fourteenth Amendment procedural due process claim, medical battery claim, and intentional infliction of emotional distress claim without leave to amend as to all defendants for failure to state a claim. *Id.* The Court dismissed the fraud by concealment claim and negligent infliction of emotional distress (NIED) claim without leave to amend as to Harkins, Bigger, and Orr, but with leave to amend as to Underhill, Lee, Ehrensaft, and Rosenthal. *Id.* The motion to dismiss the § 1983 substantive due process claim was denied as to Orr, Lee, Ehrensaft, and Rosenthal in their individual capacities, but the Court noted these defendants could raise a qualified immunity defense in subsequent proceedings. *Id.* The § 1983 substantive due process claim was dismissed with leave to amend as to Harkins, Bigger, and Underhill on the basis they were not *de facto* state actors. *Id.*

The SAC includes three causes of action: (1) the substantive due process claim under 42 U.S.C. § 1983, (2) fraud by concealment, and (3) NIED. SAC at 24-28. The present motions cumulatively argue that all causes of action should be dismissed as to all

defendants for lack of jurisdiction or failure to state a claim. Dkt. Nos. 96-100.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This "facial plausibility" standard requires the plaintiff to allege facts that add up to "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While courts do not require "heightened fact pleading of specifics," a plaintiff must allege facts sufficient to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555, 570.

In deciding whether the plaintiff has stated a claim upon which relief can be granted, the court must assume that the plaintiff's allegations are true and must draw all reasonable inferences in the plaintiff's favor. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court is not required to accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Sciences Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citation and internal quotation marks omitted). A pleading must contain allegations that have "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard is not akin

to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 555 U.S. at 556).

Dismissal under Rule 12(b)(6) is also proper when the complaint "lacks a cognizable legal theory" or "fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). Exhibits attached to the complaint, documents incorporated by reference, and matters properly subject to judicial notice are considered when reviewing the sufficiency of a complaint. *In re NVIDIA Corp. Security Litigation*, 768 F.3d 1046, 1051 (9th Cir. 2014). If the Court dismisses the complaint, it must then decide whether to grant leave to amend. The Ninth Circuit has "repeatedly held that a district court should grant leave to amend . . . unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (citations and internal quotation marks omitted).

DISCUSSION

I. Requests for Judicial Notice

Plaintiff requests judicial notice of facts related to (1) the Tuskegee syphilis study, (2) Project MKULTRA, (3) the National Institutes of Health Sexually Transmitted Disease experiments in Guatemala, (4) the practice of lobotomy, (5) the Leo Stanley experiments, (6) the Nazi medical experiments, (7) defendant Rosenthal's declaration in *Boe v. Marshall*, (8) Alabama's reply brief in *Boe v. Marshall*, (9) Alabama's amicus curiae brief to the

U.S. Supreme Court in *L.W. v. Skrmetti*, and (10) Harkin's report in family court. Dkt. No. 105-1. UCSF defendants Ehrensaft, Rosenthal, and Lee request judicial notice of (1) the fact that Minor is no longer a minor, and (2) the state court custody order, available at Docket Number 90, SAC, Ex. A 4-9. Dkt. No. 101-1 at 1-2.

Under Federal Rule of Evidence 201, a "court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Rule 201 applies to adjudicative facts and not legislative facts. According to the Advisory Committee, adjudicative facts "are simply the facts of the particular case," in other words, the "facts concerning the immediate parties—who did what, where, when, how and with what motive or intent." *See* Fed. R. Evid. 201 (note to subdivision (a) for 1972 proposed rules). On the other hand, legislative facts "are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body." *See id.*

A. Plaintiff Requests 1-6 (Historical Medical Experiments)

Plaintiff requests judicial notice of various historical medical experiments and studies. Dkt. No. 105-1 at 2-5. Plaintiff claims the relevance of such studies is to show "the plausibility of a conspiracy to use deception in the practice of involuntary human

medical experimentation in the United States." *Id*. The Court DENIES the request for judicial notice of (1) the Tuskegee syphilis study, (2) MKULTRA, (3) the NIH STD experiments in Guatemala, (4) the practice of lobotomy, (5) the Leo Stanley experiments, (6) the Nazi medical experiments pursuant to Rule 201 because the fact that these studies exist does not concern the "immediate parties" of this case. Further, five of the six sources cited by plaintiff are Wikipedia pages, not "sources whose accuracy cannot reasonably be questioned." *See* Fed. R. Evid. 201(b)(2).

B. Plaintiff Requests 7-9 (Documents From *Boe v. Marshall* and *L.W. v. Skrmetti*)

Plaintiff seeks judicial notice of legal papers filed in two cases from other jurisdictions "to demonstrate the existence of material factual disputes regarding the purported safety and efficacy of puberty blockers." Dkt. No. 105-1 at 6-7. The Court does not need to take judicial notice of legal arguments filed in other courts. The Court DENIES the request for judicial notice of (7) defendant Rosenthal's declaration in *Boe v. Marshall*, (8) Alabama's reply brief in *Boe v. Marshall*, and (9) Alabama's amicus curiae brief to the U.S. Supreme Court as these documents are irrelevant to the current parties and proceeding.

C. Plaintiff Request 10 (Harkins Report)

Plaintiff requests judicial notice of defendant Harkin's report as minors' counsel not for its truth, but to document what Harkins said to the family court. Dkt. No. 105-1 at 7. Harkins objects, arguing the information is "not relevant to the instant proceeding" and "plaintiff's opposition makes abundantly clear he

is disputing the veracity of claims made by Harkins in the report, which necessarily requires the Court to assume the truth of the statements made in the brief." Dkt. No. 108 at 6. The Court GRANTS the request for judicial notice of Harkin's report but does not consider the content of the report particularly illuminating or helpful to plaintiff's claims.

D. Rosenthal, Lee, Ehrensaft Requests 1-2 (Minor's Age, Custody Order)

The UCSF defendants request judicial notice of (1) the fact that Minor is no longer a minor, and (2) the state court's custody order, available at Dkt. No. 90, SAC, Ex. A 4-9. Dkt. No. 101-1 at 1-2. The Court previously granted judicial notice of these facts. Dkt. No. 86 at 7. The Court GRANTS both requests.

II. Whether the *Rooker-Feldman* Doctrine Applies

Defendants Rosenthal, Lee, and Ehrensaft assert the "Court should refuse to hear plaintiff's claims as it is an improper de facto appeal of the state court custody order." Dkt. No. 100 at 10. Defendant Orr likewise argues "success on the merits would require the parties to relitigate the meaning of that custody order," and the "Second Amended Complaint is in essence a de facto appeal of the custody order, and therefore should be dismissed . . . pursuant to the *Rooker-Feldman Doctrine*." Dkt. No. 99 at 8.

Federal district courts, as courts of original jurisdiction, may not review the final determinations of state courts. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923) (holding district

courts may not exercise appellate jurisdiction over state courts). If a plaintiff does not assert legal error on the part of the state court, the plaintiff is not bringing a "de facto appeal" prohibited by *Rooker-Feldman*. *See Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1143 (9th Cir. 2004). The Court concludes that the *Rooker-Feldman* doctrine would prohibit challenges to the validity of the underlying custody order, to the extent such challenges are made. *See id*. However, the Court disagrees with defendants that the Court must decline to hear plaintiff's complaint. While the custody order is relevant to the merits of the case, the Court is not persuaded that "adjudication of the federal claims would undercut the state ruling" because plaintiff is not requesting review or modification of the custody order, and Minor has since turned 18. *See Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003); Dkt. No. 86 at 7.

Plaintiff's argument here is unlike other cases dismissed pursuant to *Rooker-Feldman*, where the plaintiff's claims would undercut a state custody order. *See, e.g., Tali v. Liao*, No. 18-0330, 2018 WL 5816171, at *4 (N.D. Cal. Nov. 5, 2018) (dismissing plaintiff's claim that defendants "plotted against him to take his child away" because "in making these allegations against Defendants, [plaintiff] is actually attacking the state custody decision" in violation of the *Rooker-Feldman* doctrine); *Nemcik v. Mills,* No. 16-0322, 2016 WL 4364917, at *6 (N.D. Cal. Aug. 16, 2016) (holding plaintiff's claim was barred by the *Rooker-Feldman* doctrine because the basis of plaintiff's action was to "re-calculate her [state] child support orders").

For the reasons above, the Court DENIES defendants' motion to dismiss the case under the *Rooker-Feldman* doctrine.

III. Whether the § 1983 Claim Should be Dismissed For Failure to State a Claim (First Cause of Action)

Plaintiff brings a 42 U.S.C. § 1983 claim against Rosenthal, Lee, Ehrensaft, and Orr (as alleged state actors in their individual capacity) and Bigger, Harkins, and Underhill (as alleged *de facto* state actors in their individual capacity).[5] SAC at 24. "To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). Dismissal of a § 1983 claim on a Rule 12(b)(6) motion "is proper if the complaint is devoid of factual allegations that give rise to a plausible inference of either element." *Naffe v. Frey*, 789 F.3d 1030, 1036 (9th Cir. 2015). "Section 1983 does not confer rights, but instead allows individuals to enforce rights contained in the United States Constitution and defined by federal law." *Vinson v. Thomas*, 288 F.3d 1145, 1155 (9th Cir. 2002).

A. Whether Defendants are State Actors

Only a state actor can be liable under 42 U.S.C. § 1983. *See American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) ("Like the state-action

[5] Plaintiff's caption mistakenly labels Orr and omits defendant Bigger, but the Court addresses the substance of the claims against these defendants. See SAC at 24.

requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach "'merely private conduct, no matter how discriminatory or wrongful'," *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982) (quoting *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948)).").

i. Whether Rosenthal, Ehrensaft, Lee, and Orr are State Actors

The Court's prior order found plaintiff intended to sue Rosenthal, Ehrensaft, Lee, and Orr (the "UCSF defendants") in both their individual and official capacities. Dkt. No. 86 at 14. The Court previously dismissed "[a]ll claims against the individual defendants [including Rosenthal, Lee, Ehrensaft, and Orr] in their official capacities . . . based on Eleventh Amendment immunity" but permitted the claim to proceed against Rosenthal, Lee, Ehrensaft, and Orr in their individual capacity. *Id*.

Although it is undisputed that the individual UCSF defendants are state actors, Rosenthal, Ehrensaft, and Lee move to dismiss the § 1983 claim because "[p]laintiff only asserts claims against the medical defendants in their official capacities and is silent as to any allegation against them in their individual capacities." Dkt. No. 100 at 19. Orr likewise moves to dismiss the claim because the SAC "does not contain any allegations that Defendant Orr is being sued in his individual capacity." Dkt. No. 99 at 1 n. 1. The Court understands the defendants to be arguing that plaintiff has failed to allege defendants are state actors in their individual capacity because the SAC allegations only arise from defendants' official roles at

UCSF. However, defendants' characterization is incorrect, because "'acting in their official capacities' is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury." *Hafer v. Melo*, 502 U.S. 21, 26 (1991). "[T]o establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." *Id.* at 25 (citations and internal quotation marks omitted) (emphasis in original).

The Court concludes the UCSF defendants are state actors in their individual capacity for purposes of § 1983. *See id.; see also Alden v. Maine*, 527 U.S. 706, 757 (1999) ("Even a suit for money damages may be prosecuted against a state officer in his individual capacity for unconstitutional or wrongful conduct fairly attributable to the officer himself, so long as the relief is sought not from the state treasury but from the officer personally."). The Eleventh Amendment does not bar a suit against these defendants in their individual capacities. *See Hafer*, 502 U.S. at 31 ("Insofar as respondents seek damages against [the state officer] personally, the Eleventh Amendment does not restrict their ability to sue in federal court.").

ii. Whether Harkins is a State Actor

Plaintiff alleges "Harkins is a state actor, or in the alternative, a *de facto* state actor." SAC ¶ 120. Plaintiff argues Harkins is a state actor because Harkins was appointed by the California state judiciary to act as "minor's counsel" pursuant to Family Code § 3151, and neither Hudacko or Underhill made such a request. *Id.* ¶ 121. Plaintiff argues "[a]s a result of Harkins'

assignment by the California state judiciary, Harkins' actions are those of the State of California." *Id.* Plaintiff cites no legal authority to support the argument that an attorney appointed by the state to represent a minor is a state actor. *See id.*

Harkins argues he is not a state actor because he is a "private attorney appointed by a court to act as counsel for a minor in child custody proceedings," citing the Court's previous order and *Kirtley v. Rainey*, 326 F.3d 1088 1093-1096 (9th Cir. 2003). Dkt. No. 98 at 6. In *Kirtley*, the Ninth Circuit found the actions of "a state-appointed guardian ad litem" were not "state action" for purposes of § 1983. *Kirtley*, 326 F.3d at 1091-96. The Ninth Circuit held "[e]ven if [the state-appointed guardian ad litem] committed the fraudulent or conspiratorial acts of which she is accused, the actions simply are not fairly attributable to the state." *Id.* at 1096. The Court finds the case at hand is sufficiently similar to *Kirtley* to conclude Harkins is not a state actor for purposes of § 1983.

The Court addresses whether Harkins is a *de facto* state actor below.

B. Whether Defendants are *De Facto* State Actors

The parties dispute whether Harkins, Bigger, and Underhill are *de facto* state actors, such that a § 1983 claim can be brought against them. The Supreme Court "has articulated four tests for determining whether a private individual's actions amount to state action: (1) the public function test; (2) the joint action test; (3) the state compulsion test; and (4) the governmental nexus test." *Franklin v. Fox*, 312 F.3d

423, 445 (9th Cir. 2002). Plaintiff alleges that Harkins, Bigger, and Underhill are de facto state actors under the joint action test. *See* SAC ¶¶ 122, 130, 141.

"Under the joint action test, courts examine whether state officials and private parties have acted in concert in effecting a particular deprivation of constitutional rights." *Franklin v. Fox*, 312 F.3d at 445 (internal quotation marks and citations omitted). "The test focuses on whether the state has so far insinuated itself into a position of interdependence with the private actor that it must be recognized as a joint participant in the challenged activity." *Id.* (internal quotation marks and citations omitted). "Joint action therefore requires a substantial degree of cooperative action." *Collins v. Womancare*, 878 F.2d 1145, 1154 (9th Cir. 1989). A plaintiff may demonstrate joint action by showing the existence of a conspiracy or that the "private party is a willful participant in joint action with the State or its agents." *Id.* (internal quotation marks and citations omitted). "To prove a conspiracy between the state and private parties under section 1983, [plaintiff] must show an agreement or meeting of the minds to violate constitutional rights." *United Steelworkers of America v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-51 (9th Cir. 1989) (internal quotation marks and citations omitted); see *also Franklin*, 312 F.3d at 445 ("To be liable as a co-conspirator, a private defendant must share with the public entity the goal of violating a plaintiff's constitutional rights.").

i. Whether Bigger is a *De Facto* State Actor

The Court previously dismissed the substantive due process claim against Bigger, holding he was not a *de facto* state actor. Dkt. No. 86 at 12. However, the Court granted leave to amend because plaintiff filed his amended complaint *pro se*.[6] *Id*. Plaintiff continues to allege Bigger is a *de facto* state actor under the joint action test. SAC ¶ 26. Defendant Bigger moves to dismiss the claim, arguing he is not named in any of the causes of action and plaintiff does not allege details of a claim against him in the supportive paragraphs under each cause of action.[7] Dkt. No. 96 at 5. In the alternative, Bigger argues he is not a *de facto* state actor. *Id*. at 6. Bigger argues he was simply Underhill's attorney and the SAC lacks allegations showing he "and any state actor acted in concert or had any plan related to the medical care of [Minor]." Dkt. No. 110 at 4.

The Court agrees the SAC has not alleged sufficient facts to allege Bigger is a *de facto* state actor. Plaintiff alleges Bigger is:

> a licensed California attorney and at all relevant times the attorney representing Underhill in the FAMILY LAW CASE, who, acting as de facto agent of WPATH

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[6] Plaintiff retained counsel to file the present complaint.

[7] Plaintiff does not list defendant Bigger in the § 1983 claim—an omission plaintiff's opposition notes was accidental as it is plaintiff's "intention to pursue Bigger as well as the other named Defendants." Dkt. No. 105 at 6. The Court will resolve the question on its merits.

> DEFENDANTS [Rosenthal, Ehrensaft, and Lee] and in conformity with the TRUE WPATH MISSION, participated in a conspiracy with the other Defendants and a SCHEME by accepting money in exchange for advising Underhill according to the PLAYBOOK, coordinating the Supprelin surgery on [Minor] without the consent of Plaintiff, rather than advising his client according to the law, the constitution, or the NO SURGERY INJUCTION. Defendant Bigger participated in the conspiracy with the other defendants to, help deceive Underhill into the believing that GENDER AFFIRMING CARE is safe and effective for her son; by falsely telling Underhill that unconsented to gender identity related surgery on a minor was legal; by concealing the fact that Underhill was being tricked consenting to the Minor Child's participation in INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION; and by concealing the SCHEME from Hudacko.

SAC ¶ 25. The SAC further alleges Bigger "financially benefited from the Supprelin for [his] billed time in 'resolving' the issue to circumvent Hudacko's consent… Underhill, UCSF, Rosenthal, Ehrensaft, Bigger and Harkins in a 'meeting of the minds' all worked in concert with a singular goal – namely to have the Supprelin implant surgery occur, be covered by insurance, and be hidden from Hudacko." *Id.* ¶¶ 107-108.

Plaintiff attempts to portray Bigger as an actor in a grander, WPATH conspiracy. But Plaintiff's allegations involving WPATH resemble the allegations dismissed by the Supreme Court in *Iqbal*:

> Respondent pleads that petitioners 'knew of, condoned, and willfully and maliciously agreed to subject [respondent]' to harsh conditions of confinement 'as a matter of policy, solely on account of [respondent's] religion, race, and/or national origin and for no legitimate penological interest. The complaint alleges that Ashcroft was the 'principal architect' of this invidious policy, and that Mueller was 'instrumental' in adopting and executing it. These bare assertions, much like the pleading of conspiracy in Twombly, amount to nothing more than a 'formulaic recitation of the elements' of a constitutional discrimination claim. As such, the allegations are conclusory and not entitled to be assumed true. To be clear, we do not reject these bald allegations on the ground that they are unrealistic or nonsensical. . . . It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.

Iqbal, 556 U.S. at 680-681 (internal citations omitted). Here, the SAC alleges a conspiracy between the defendants, but the allegations are likewise conclusory in nature. *See, e.g.,* SAC ¶¶ 107-108. Thus, plaintiff's allegations asserting conspiracy between the defendants suffer from the same deficiencies as

plaintiff's allegations in the FAC; that is, they are conclusory allegations devoid of specific facts, such that this Court need not accept them as true. *See Iqbal*, 556 U.S. at 680-681; *In re Gilead Sciences Sec. Litig.*, 536 F.3d at 1055.

Under *Iqbal*, the Court next considers "the factual allegations in respondent's complaint to determine if they plausibly suggest an entitlement to relief." *Iqbal*, 556 U.S. at 682. Here, plaintiff's claims do not. The factual allegations include assertions that Bigger accepted money for legal work and gave his client legal advice. *See* SAC ¶¶ 107, 129. The Court finds these allegations have reasonable explanations, such as the existence of a legitimate attorney-client relationship. See *Iqbal,* 556 U.S. at 681-682 (finding racial discrimination was "not a plausible conclusion" for why respondent was arrested because there were "more likely explanations" for the arrest, including a "legitimate policy" by law enforcement). Additionally, the factual allegations do not establish "an agreement or meeting of the minds to violate constitutional rights" as required to find joint action. *See Phelps Dodge Corp.*, 865 F.2d at 1540-51; *see also Franklin*, 312 F.3d at 445. Though plaintiff uses the term "meeting of the minds," SAC ¶ 108, the assertions made are a "formulaic recitation of the elements" and "not entitled to be assumed true." *See Iqbal*, 556 U.S. at 681-682.

Accordingly, the Court finds Bigger is not a *de facto* state actor for purposes of § 1983. The § 1983 claim is dismissed as to Bigger without leave to amend.

ii. Whether Harkins is a *De Facto* State Actor

The Court previously dismissed federal claims against Harkins, minor's counsel in the family court action, finding he is not a *de facto* state actor. Dkt. No. 86 at 12. In the SAC, plaintiff continues to allege Harkins was a *de facto* state actor. Specifically,

> (a) Harkins was aware of the NO SURGERY INJUNCTION; (b) Harkins was aware of Hudacko's opposition to puberty blockers as well as surgical procedures, at the latest on 10/21/2020; (c) Harkins was intimately involved in the joint effort of REGENTS, Orr, Rosenthal, Ehrensaft, Underhill and Bigger to solve the insurance problem and consent issue. [See Exh."G"]; (d) Harkins excluded Hudacko from the discussion and failed to alert Hudacko of the decision unilaterally being made among the Defendants; (e) Harkins had an email exchange with Underhill on May 11, 2021 and call with "counsel." Upon information and belief, that "counsel" either was Orr or Bigger, as Hudacko did not have counsel on or about May 13, 2021. [See Exh. "F"] Upon information and belief, the "conference call" included Harkins, and Orr and Bigger and included a discussion and agreement to engage in the SCHEME.

SAC ¶ 122.

While plaintiff uses the labels "SCHEME" and "joint effort" the SAC does not include specific factual

allegations to support those conclusions. *See* SAC ¶¶ 131-152. Additionally, many of plaintiff's allegations against defendant Harkins do not need to be accepted as true under *Iqbal* for reasons explained *supra*. For example, many of the allegations made against Bigger are also made against Harkins, such as "Harkins financially benefited from the Supprelin for [his] billed time in 'resolving' the issue," and "Harkins in a 'meeting of the minds' [with other defendants] all worked in concert with a singular goal—namely to have the Supprelin implant surgery occur, be covered by insurance, and be hidden from Hudacko." SAC ¶¶ 107-108. The Court does not need to assume as true these conclusory allegations.

The remaining factual allegations against Harkins include that Harkins knew about Section 7b of the custody order, knew Hudacko opposed puberty blockers and surgical procedures, excluded Hudacko from the decision, and had email exchanges and calls with other defendants. *See* SAC ¶ 122. Plaintiff does not allege Harkins, as counsel for Minor in family court, had a duty to include Hudacko in discussions taking place between Harkins and other defendants, or otherwise consider Hudacko's perspective. *See* SAC *generally*. The Court finds Harkins is not a *de facto* state actor because plaintiff's factual allegations do not "show an agreement or meeting of the minds to violate constitutional rights" as required to "prove a conspiracy between the state and private parties under section 1983." *See Phelps Dodge Corp.*, 865 F.2d at 1540. Bare allegations of a conspiracy between the defendants to violate plaintiff's constitutional rights are insufficient. *See Iqbal*, 556 U.S. at 680-81. The

SAC has not cured the deficiencies in this argument in the FAC. The Court finds Harkins is not a *de facto* state actor and dismisses the § 1983 cause of action against him, without leave to amend.

iii. Whether Underhill is a *De Facto* State Actor

The Court previously dismissed federal claims against Underhill, finding she is not a *de facto* state actor. Dkt. No. 86 at 12. However, the Court granted leave to amend because plaintiff filed his complaint *pro se*. *Id*.

Plaintiff alleges Underhill "is the mother of [Minor] and Hudacko's ex-wife and, at all times favors attempts to do the impossible -namely 'transition' [Minor] from being a boy into being a girl, falsely believing that such a thing was possible, and falsely believing that GENDER AFFIRMING CARE is safe & effective, and agreed to and coordinated with the other Defendants to allow the Supprelin surgery on [Minor] without the consent of Plaintiff." SAC ¶ 27. Plaintiff's opposition alleges:

> [d]efendants wrote down in medical progress notes how Underhill was working with her counsel, Harkins, and [Orr] to achieve 'resolution.' Drawing reasonable inferences from this circumstantial and direct evidence of discussions, and alleging a meeting of the minds on a common objective, that was in fact achieved, one must ask resolution of what? The only reasonable inference is not 'resolution' of the family law case but 'resolution' of the fact that Plaintiff did not

> consent to their 'objective' of which some details are only in the possession of Defendants.

Dkt. No. 101 at 8. Underhill moves to dismiss, arguing plaintiff "has made only conclusory allegations that do not meet the criteria of the joint action test." Dkt. No. 97 at 6.

The Court agrees that plaintiff's allegations are too conclusory to establish that Underhill is a *de facto* state actor under the joint action test. Plaintiff's allegations as to defendant Underhill suffer from the same shortcomings as the allegations against Bigger and Harkins. As explained *supra*, the Court finds that the allegations of a conspiracy or "meeting of the minds" between defendants to violate plaintiff's constitutional rights lack sufficient facts. The Court is not required to assume such conclusory allegations are true. *See In re Gilead Sciences Sec. Litig.*, 536 F.3d at 1055; *Iqbal*, 556 U.S. at 680-81.

Additionally, the new pleadings in the SAC primarily allege the other defendants willfully "deceive[d]" Underhill into "believing that GENDER AFFIRMING CARE is safe and effective so she would consent on behalf of Minor." SAC ¶¶ 21-26, 124. Plaintiff also alleges the other defendants "are all willful participants in the plan to conceal from Underhill and the public at large the experimental nature of GENDER AFFIRMING CARE in general, and of the Supprelin Implant surgery in particular." *Id.* ¶ 125. Such allegations conflict with finding joint action between Underhill and other defendants because the allegations suggest Underhill was not a

"willful participant" and did not have a "meeting of the minds" with the other defendants. *See Collins*, 878 F.2d at 1154; *Phelps Dodge Corp.*, 865 F.2d at 1540. The Court concludes Underhill is not a *de facto* state actor for § 1983 purposes. This claim against Underhill is therefore dismissed, without leave to amend.

C. Whether Qualified Immunity Shields the State Actors

The Court previously concluded the UCSF defendants (Ehrensaft, Rosenthal, Lee, and Orr) could argue for qualified immunity in subsequent proceedings. Dkt. No. 86 at 30.

The defense of qualified immunity protects "government officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The rule of "qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). A court considering a claim of qualified immunity must determine whether the plaintiff has alleged the deprivation of an actual constitutional right and whether such right was clearly established so that it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (citing *Saucier*, 533 U.S. at 201). A court may exercise its discretion in deciding which prong to address first, in

light of the particular circumstances of each case. *Id.* at 236.

The previous Court order found it was premature to determine whether a violation of the custody order, if proven, would rise to the level of a violation of plaintiff's constitutional rights. Dkt. No. 86 at 15. Due to the relative novelty of the facts at hand, the Court's discussion therefore begins with the second prong. *See Pearson*, 555 U.S. at 236. Under the second prong of the qualified immunity analysis, "[a] right is clearly established only if its contours are sufficiently clear that 'a reasonable official would understand that what he is doing violates that right.' In other words, 'existing precedent must have placed the statutory or constitutional question beyond debate.'" *Carroll v. Carman*, 574 U.S. 13, 16 (2014) (citations omitted). The inquiry of whether a constitutional right was clearly established must be undertaken in "the specific context of the case, not as a broad general proposition." *Saucier*, 533 U.S. at 201.

The parties do not dispute that the rights of parents to make child-rearing decisions is a liberty interest under the Fourteenth Amendment, but the relevance of that right to the "specific context" of this case is disputed. *See Saucier*, 533 U.S. at 201. In his complaint, plaintiff does not precisely frame the contours of the constitutional right he asserts. Plaintiff acknowledges the custody order "stripp[ed] Hudacko of most of his fundamental constitutional parental rights" when it awarded custody of Minor to Underhill. SAC ¶ 72. Plaintiff concedes Underhill had medical decision-making authority over Minor. *Id.* However, plaintiff alleges Section 7b of the custody

order was an exception, and prohibited "any gender identity related surgery" without both Hudacko and Underhill's consent until Minor was 18. *Id.* In essence, plaintiff's parental rights were limited to a right to veto a particular category of medical procedures before Minor reached adulthood.

The question for the Court is therefore whether a parental right to veto certain medical procedures—when already deprived of general medical-decision making power—has been clearly established as a constitutional right. Without determining that such a right exists, the Court holds that this right has not been clearly established.

The Court finds this case distinguishable from the cases plaintiff cites in support of his position that his constitutional rights were clearly violated. In *Wallis v. Spencer*, 202 F.3d 1126, 1134-35 (9th Cir. 2000), detectives removed young children from their parent's custody, took the children to a hospital, and ordered an intrusive examination of both children for evidence of sexual abuse without their parents' knowledge or consent and without an order of the court authorizing such intrusive examinations. *Wallis* is a vastly different factual posture than the case at hand, where Underhill—who had near complete authority to make medical decisions on behalf of Minor—consented to the treatments at UCSF, and such treatment was arguably permitted by a court order. SAC ¶¶ 72, 76. *Wallis* cannot be said to "clearly establish" the right of one parent to veto a medical procedure that the other parent and minor both consent to, because *Wallis* addressed a scenario where state detectives seized children and had them examined for investigative

purposes. *See id*. *Parham v. J.R.*, 442 U.S. 584, 602 (1979) also addressed a different issue than the case at hand. The issue in *Parham* was "what process is constitutionally due a minor child whose parents or guardian seek state administered institutional mental health care for the child and specifically whether an adversary proceeding is required prior to or after the commitment." *Parham*, 442 U.S. at 587. The case at hand does not involve institutionalized mental health care, or questions related to the due process owed to a minor defendant. *See id*.

At the November 15, 2024 motion hearing, plaintiff's counsel cited an additional case, *Pope v. Cnty. of San Diego*, 719 F. Supp. 3d 1076 (S.D. Cal. 2024). The Court's understanding is that plaintiff identified this case for its explanation of two rights recognized by the Supreme Court. The rights discussed in *Pope* include (1) the parents' interest in custody and control of their children, which encompasses the right to make medical decisions for the child, and (2) the family right to association, which includes a right for parents and children to be together when a child receives medical care. *Id*. at *1084-91. Citing numerous cases—most of which concerned parental rights in the child welfare context—*Pope* describes these rights as "long established" but "not absolute." *Id*. at 1086 (internal quotation marks and citation omitted).

Neither of the rights discussed in *Pope*[8] apply to plaintiff's circumstances here. The state family court

[8] The Court does not understand plaintiff to be arguing that *Pope* itself "clearly establishes" a relevant right, but to the extent

lawfully stripped plaintiff of nearly all his parental rights in its custody order. SAC ¶ 72. In addition to Section 7a and 7b excerpted *supra*, the custody order states: "Mother [Underhill] shall be the sole temporary legal custodial parent of [Minor] and may make decisions on her own for [Minor's] health, education, and welfare without father's consent." While "Father [plaintiff] shall have a right to obtain all otherwise confidential information regarding [Minor's] health, education, and welfare," the order specifies that "Father does not have a 'right' to attend medical appointments for [Minor]." SAC Ex. A at 6. The order thus at least limits, if not removes, the two rights discussed in *Pope* as they pertain to plaintiff. *See Pope*, 719 F. Supp. 3d at 1084-91.[9]

Further, the Court is not persuaded by plaintiff's apparent argument that defendants violated a "clearly established" Constitutional right because Section 7b of the custody order (plaintiff's ability to withhold consent to surgical procedures) overrides Section 7a (Minor's ability to pursue hormone therapy if recommended by UCSF). Reasonable doctors or lawyers could have believed the Supprelin implant was part of or an adjunct to the type of hormone therapy specifically permitted by Section 7a of the custody order. *See* SAC ¶ 76. While a court might conclude defendants wrongly believed the procedure was permitted without plaintiff's consent, the correct

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plaintiff wishes to make this argument, the Court notes *Pope* was decided in May 2024, after the events at issue here.

[9] As noted above, plaintiff does not in this case challenge the legality or constitutionality of that order. Had he done so, the *Rooker-Feldman* doctrine would have applied.

interpretation of these provisions of the custody order was not "beyond debate." *See Carroll*, 574 U.S. at 16.[10]

To be clear, the Court does not determine whether plaintiff's constitutional rights were actually violated, but the Court holds that the UCSF defendants did not violate a "clearly established constitutional right." As such, they are entitled to qualified immunity.

C. § 1983 Claim Summary

The Court GRANTS the motion to dismiss as to defendants Ehrensaft, Rosenthal, Lee, and Orr because they are shielded from liability by qualified immunity. The Court GRANTS the motion to dismiss as to defendants Harkins, Bigger, and Underhill, because plaintiff has not pled facts establishing they are *de facto* state actors. The Court dismisses plaintiff's § 1983 claim with prejudice.

IV. State Law Claims

A. Whether the Court Must Dismiss the State Claims

"District courts may decline to exercise supplemental jurisdiction over a claim" if "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c). In exercising discretion to retain supplemental

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[10] Separate from the constitutional claim, plaintiff is entitled to make an argument that defendants violated the terms of the custody order, but that argument belongs back in the state court. The Court notes plaintiff filed but later withdrew criminal contempt actions against Underhill, Harkins, Bigger, and UCSF in Contra Costa County Superior Court. Dkt. No. 77 at 5. The propriety of defendants' actions could clearly be determined in that forum.

jurisdiction, "a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity . . ." *Carnegie-Mellon University v. Cohill*, 484 U.S. 343, 350 (1988) (citing *Mine Workers v. Gibbs*, 383 U.S. 715 (1966)). If the Court dismisses the remaining federal claim, the Court may dismiss the state claims (but it is not required to do so). *See id*. Here, the Court will consider the state law claims on their merits, to avoid forcing the parties to relitigate these issues in state court.

B. Whether the Fraud by Concealment Claim Should be Dismissed for Failure to State a Claim (Second Cause of Action)

The Court previously granted a motion to dismiss plaintiff's fraudulent concealment claim, without leave to amend as to Bigger, Harkins, and Orr, and with leave to amend as to Rosenthal, Ehrensaft, Lee, and Underhill. Dkt. No. 86 at 23-24. The Court additionally noted plaintiff must meet the heightened pleading standard of Rule 9(b) if plaintiff filed a fraud by concealment claim in an amended complaint. *Id*. Plaintiff's amended fraud by concealment claim is brought against Rosenthal, Ehrensaft, Lee, and Orr. SAC at 28. The Court addresses the claim only as to Rosenthal, Ehrensaft, Lee and Underhill because leave to amend was not granted as to defendant Orr.[11] Dkt. No. 86 at 23-34.

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[11] Plaintiff did not name Underhill in the caption of this action even though the Court granted leave to amend as to Underhill. Dkt. No. 86 at 23-24. Plaintiff argues this is error in his

The required elements of fraudulent concealment are: "(1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact." *Broge v. ALN Int'l, Inc.*, No. 17-CV-07131-BLF, 2018 WL 2197524, at *4 (N.D. Cal. May 14, 2018) (quoting *Graham v. Bank of Am., N.A.*, 226 Cal. App. 4th 594, 605-06 (2014)). Under Rule 9(b), fraud claims must be pled with particularity. Rule 9(b)'s heightened pleading requirements demand that "[a]verments of fraud must be accompanied by the who, what, when, where, and how" of the misconduct charged and "must set forth what is false or misleading about a statement, and why it is false." *Vess v. Ciba-Geigy Corp. U.S.A.*, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotation marks and citations omitted). Fraud allegations must include the "time, place, and specific content of the false representations as well as the identities of the parties." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (internal quotation marks and citation omitted). However, "[m]alice, intent, knowledge, and

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opposition and seeks leave to amend to correct the error. Dkt. No. 103 at 11. For efficiency, the Court is considering the claim as if Underhill had been named. Plaintiff concedes Orr should not have been named as a defendant for the fraudulent concealment claim. Dkt. No. 103 at 11.

other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b).

After reviewing the added allegations in plaintiff's SAC, the Court concludes plaintiff still has not established that any of the remaining defendants had a "duty to disclose" facts to plaintiff. *See Graham*, 226 Cal. App. at 605-06. Plaintiff alleges the UCSF defendants had a duty to refrain from "involuntary human medical experimentation" and to follow the family law court order. SAC ¶ 155. To the extent such a duty exists, plaintiff does not cite legal authority or otherwise explain how this translates to a "duty to disclose" information to plaintiff. *See Graham*, 226 Cal. App. at 605-06. The fraudulent concealment claim is DISMISSED as to Rosenthal, Ehrensaft, and Lee.

As to his fraud claim against Underhill, plaintiff alleges "Underhill owed Plaintiff a fiduciary duty and the duty of good faith and fair dealing as a former spouse and co-parent," but it is again unclear how this would translate to a "duty to disclose." *Id.*; SAC ¶ 157. Considering the custody order did not provide plaintiff with any right to receive updates regarding [Minor's] medical treatment, plaintiff's allegations are too conclusory to establish a duty to disclose under the heightened Rule 9(b) requirement. SAC, Ex. A at 6; *Graham*, 226 Cal. App. at 605-06. Additionally, plaintiff alleges Underhill was "deceived" by the other defendants who worked to conceal the truth from Underhill. SAC ¶¶ 21-26, 124. The allegations indicate Underhill was not a perpetrator of the alleged fraud, but herself a victim. *See id.* The fraudulent concealment claim is DISMISSED as to Underhill as well.

B. Whether the Negligent Infliction of Emotional Distress ("NIED") Claim Should be Dismissed For Failure to State a Claim (Third Cause of Action)

The Court previously dismissed plaintiff's NIED claim as to defendant Harkins, Bigger, and Orr because the plaintiff could not allege they owed plaintiff a duty of care because plaintiff was not their client, or a third0 party in a transaction intended to benefit him. Dkt. No. 86 at 28. As to the individual UCSF defendants and Underhill, the Court dismissed with leave to amend. *Id*. Plaintiff's SAC alleges the NIED claim against Rosenthal, Ehrensaft, Lee, Orr, and Underhill. SAC at 31. Plaintiff's opposition concedes the Court dismissed this cause of action as to Orr without leave to amend. Dkt. No. 103 at 11. Thus, the Court does not consider Orr in the analysis.

"California courts treat [NIED] as a form of the tort of negligence with the following elements: (1) duty; (2) breach of duty; (3) causation; (4) and damages." *Redd-Oyedele v. Santa Clara Cnty. Off. of Educ.*, No. 20-CV-00912-SVK, 2020 WL 7319404, at *4 (N.D. Cal. Dec. 11, 2020) (citing *Burgess v. Superior Court*, 2 Cal. 4th 1064, 1072 (1992)). "Whether a defendant owes a duty of care is a question of law." *Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.*, 48 Cal. 3d 583, 588 (1989). The California Supreme Court has indicated that when considering the existence of a duty, several factors "require consideration" including:

> the foreseeability of harm to the plaintiff, the degree of certainty that plaintiff suffered

> injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Christensen v. Superior Court, 54 Cal. 3d 868, 885-86 (1991) (internal quotation marks and citation omitted). "In a direct victim case, a plaintiff seeks damages for emotional distress resulting from a breach of duty owed the plaintiff which is 'assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of a relationship between the two.'" *Jacoves v. United Merchandising Corp.*, 9 Cal. App. 4th 88, 108 (1992) (quoting *Marlene F.*, 48 Cal. 3d at 590)); *see also Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 985 (1993). In direct victim cases, the limits on bystander cases have no direct application and well-settled principles of negligence are invoked. *Ragland v. U.S. Bank National Assn.*, 209 Cal. App. 4th 182, 206 (2012).

Plaintiff alleges that "[d]efendants were each aware of the fact that Hudacko, like any good parent, would be traumatized upon learning that his child had been subjected to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION. Thus, Defendants and each of them owed Hudacko an affirmative duty to refrain from participating in the SCHEME and to refrain from advancing the WPATH TRUE

MISSION." SAC ¶ 173. Plaintiff additionally alleges "[d]efendants, as medical professionals, members of WPATH had a duty to disclose their economic interests and research involving experimentation on children," and "Underhill as former spouse to Plaintiff and co-parent owed a fiduciary duty and duty of good faith and fair dealing." *Id*. ¶¶ 174-175. Plaintiff indicates he is suing under a "direct victim theory not a bystander theory." Dkt. No. 101 at 12.

The medical defendants move to dismiss, arguing "Plaintiff's claim fails because none of the allegations support a fiduciary or special relationship with the medical defendants or any actionable conduct." Dkt. No. 100 at 28. The medical defendants further argue "[a]ny claim that the medical defendants owed a duty to disclose their supposed 'economic and research interests' in gender affirming care and with respect to their involvement with WPATH, also fails because this duty was owed to the patient and not Mr. Hudacko." *Id*. at 29. Underhill also moves to dismiss, arguing the SAC still fails to state a claim against Underhill for NIED. *Id*.

The Court finds plaintiff has not alleged sufficient facts to establish the necessary legal duty as a matter of law. The Court previously found plaintiff's allegations in the FAC did not sufficiently allege that any of the defendants owed plaintiff a duty of care imposed on them as a matter of law or that arises out of the relationship between plaintiff and defendant.[12]

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[12] In the FAC, plaintiff alleged that "he was owed a duty by defendants to 'refrain from performing gender identity related surgery on the minor' without his consent and that defendants

Dkt. No. 86 at 28. Plaintiff's allegations related to defendants' duty are nearly identical in the SAC (including allegations that defendants owe plaintiff a duty to refrain from "participating in the SCHEME," refrain from "advancing the WPATH TRUE MISSION," and refrain from "concealing the SCHEME." *See* SAC ¶¶ 172-178. The SAC does not allege a legal duty owed by defendants to plaintiff, so the claim is DISMISSED.

CONCLUSION

For the foregoing reasons and for good cause shown, the Court hereby GRANTS the motions to dismiss all causes of action. For the first cause of action, the Court GRANTS the motion to dismiss as to defendants Ehrensaft, Rosenthal, Lee, and Orr because they are shielded from liability by qualified immunity, and GRANTS the motion to dismiss as to defendants Harkins, Bigger, and Underhill, because plaintiff has not pled facts establishing they are *de facto* state actors. The Court GRANTS the motion to dismiss the second and third causes of action because plaintiff has not pled facts establishing all required elements of each claim.

IT IS SO ORDERED.

Dated: November 25, 2024

/s/
SUSAN ILLSTON
United States District Judge

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breached their duty to plaintiff by 'willfully violating the no surgery injunction' in the state court order." Dkt. No. 86 at 28.

Appendix C

Case 3:23-cv-05316-SI Document 118
Filed: 11/26/24

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDWARD ALLYN HUDACKO, Plaintiff, v. JANET YI MAN LEE, et al., Defendants.	Case No. 23-cv-05316-SI **JUDGMENT**

The Court has granted defendants' motions to dismiss with respect to all causes of action. Judgment is hereby entered against plaintiff and in favor of defendants.

IT IS SO ORDERED AND ADJUDGED.

Dated: November 26, 2024

/s/
SUSAN ILLSTON
United States District Judge

Appendix D

Case 3:23-cv-05316-SI Document 86
Filed: 08/20/24

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDWARD ALLYN HUDACKO, Plaintiff, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al., Defendants.	Case No. 23-cv-05316-SI **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS** Re: Dkt. Nos. 30, 32, 36, 37

Before this Court are four motions to dismiss filed by defendants. Dkt. Nos. 30, 32, 36, 37.[1] Plaintiff opposes each motion. For the reasons set forth below, the Court GRANTS in part and DENIES in part the motions to dismiss.

[1] Defendants Regents of the University of California, Janet Yi Man Lee, Diane Ehrensaft, and Stephen Rosenthal filed two identical motions to dismiss. Dkt. Nos. 35, 36. The Court refers to the later filed motion, Dkt. No. 36, throughout.

BACKGROUND[2]

Plaintiff filed his complaint *pro se* and the complaint is 109 pages long, consisting of 26 pages of pleadings and 83 pages of attachments. Dkt. No. 19 ("Compl."). Attachments include medical records and correspondence between the parties. Plaintiff seeks to "vindicate … his right to prohibit gender identity related surgery upon his minor child." *Id.* ¶ 1.

Plaintiff and his ex-wife Christine Underhill, f/k/a/ Christine Hudacko, "were embroiled in a high-conflict family law case." *Id.* ¶ 31.[3] "The point of contention was that Christine wanted to attempt to medically 'transition' their son … from boy to girl," which plaintiff opposed "based on his belief that the treatments for 'gender dysphoria' remain largely experimental." *Id.* ¶¶ 31-32. On August 26, 2020, the Contra Costa County Superior Court granted Underhill sole temporary legal custody over their (then) minor child ("Minor") and authorized Underhill to "make decisions on her own for [Minor's] health, education and welfare without Father's consent." Compl., Ex. A at ECF 6.[4] The court ordered that

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[2] For purposes of this motion to dismiss, the Court treats as true the factual allegations as stated in plaintiff's complaint and draws all reasonable inferences in plaintiff's favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

[3] Underhill's name was restored to Christina Marie Underhill during the marriage dissolution proceedings between her and plaintiff. Dkt. No. 33-1, Ex. A at ECF 4. The Court thus refers to plaintiff's ex-wife as defendant Underhill throughout.

[4] Minor was born in 2004 and was a minor at the time of the alleged facts. Compl., Ex. A at ECF 4. The Court refers to Minor as Minor throughout to preserve their anonymity.

Plaintiff and Underhill had two children together. They were

plaintiff "not have visitation with [Minor] unless it is in a therapeutic setting with [Minor's] consent." *Id.* Plaintiff was granted "the right to obtain all otherwise confidential information regarding [Minor's] health, education, and welfare" but "does not have a 'right' to attend medical appointments for [Minor]." *Id.* Underhill was "not ordered specifically to provide Father with 'updates' on a monthly or weekly basis. Mother may provide such information to Father at her discretion." *Id.* The order further provides that plaintiff "may contact [Minor's] doctors, teachers, etc. for information about [Minor]." *Id.*

The custody order also details services Minor could receive. *Id.* at ECF 7-8. At issue here is the provision that "[Minor] will not be permitted to undergo any gender identity related surgery until they are 18 years of age, absent a written agreement by both parties, Christine Hudacko and Edward Hudacko, or an order of the court." *Id.* at ECF 7. The order also contains a provision stating: "[Minor] shall be permitted to pursue the services provided by UCSF as to [Minor's] gender identity, and shall be permitted to commence hormone therapy, if recommended by UCSF." *Id.* On September 29, 2020 Underhill informed plaintiff via email that UCSF had been provided with the custody order per their request. Compl. ¶ 36.

On February 17, 2021, without plaintiff's knowledge, Underhill took Minor for a patient visit at

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granted joint legal and physical custody over their younger child. Compl., Ex. A at ECF 4. The custody order pertaining to the younger child is not at issue in this case.

the University of San Francisco ("UCSF") Child and Adolescent Gender Center ("the UCSF Center). *Id.* ¶ 38, Ex. E. At that visit, "UCSF doctors discussed with [Minor] a category of experimental drugs called 'Puberty Blockers' that 'help temporarily suspend or block the physical changes of puberty.'" *Id.* ¶ 38 (quoting Ex. E). Four different types of puberty blockers were discussed at that visit. *Id.* ¶ 39. According to plaintiff, the first three options were nonsurgical (injections or an oral tablet), however the fourth option – a "subcutaneous histrelin implant" – required surgery. *Id.* On that same date, UCSF sent an appointment follow-up letter that listed the risks of puberty blockers, including that "the side effects and safety of puberty blockers are not completely understood," "[t]here may be long-term risks that are not yet known," and the blockers are "not approved by the Food and Drug Administration for this specific use." *Id.*, Ex. E at ECF 2-21. On August 4, 2021, a "histrelin subcutaneous implant was inserted" into Minor's arm ("the implant procedure"). *Id.*, Ex. I. Plaintiff alleges that this procedure was categorized as surgery. *Id.* ¶ 45. UCSF billed $209,820.34 for the procedure. *Id.* ¶ 46, Ex. L. Plaintiff points to a claim detail from UnitedHealthcare that lists a "surgery" on August 4, 2021, amount billed $745. *Id.*, Ex. D. UCSF medical records indicate that the "histrelin subcutaneous implant was inserted" and refer to the insertion as a "procedure." *Id.*, Ex. I. The implant was 3.5 cm long and 3 mm wide. *Id.*

On October 18, 2021 Underhill emailed plaintiff: "[Minor] has begun hormone therapy – testosterone blocker (Supprelin) via an implant and estrogen via

pills (Estradiol). [Minor] is doing well and happy to finally begin the process … Insurance has paid for the vast majority of the implant procedure and I sent UCSF a check for the balance ($2035.64). I don't expect that you will pay for half given your disapproval of transitioning." Compl., Ex. C. Plaintiff "did not know that Defendants were planning to perform gender related surgery" until this date, "months after surgery was actually performed." *Id.* ¶ 91. Had the "scheme" been disclosed to plaintiff prior to the "surgery," plaintiff "could and would have brought the scheme to the attention of the Family Court, seeking an emergency protective order placing all Defendants on notice that severe consequences – sufficient to stop the scheme – would result from any violation of the no surgery injunction." *Id.* ¶ 93.

Plaintiff has sued seven defendants including Underhill, her counsel, Minor's court-appointed counsel, UCSF, UCSF physicians, and a volunteer attorney with the UCSF Center.[5] He alleges that The

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[5] Defendant Underhill, sued in her individual capacity and as a *de facto* state actor, is plaintiff's ex-wife and the mother of Minor. *Id.* ¶¶ 28-29. Defendant Bigger, sued in his individual capacity and as a *de facto* state actor, is an attorney who represented Underhill in the family law case. *Id.* ¶¶ 24-25. Defendant Harkins, sued in his individual capacity and as a *de facto* state actor, was the court-appointed attorney for Minor during the family court proceedings. *Id.* ¶¶ 26-27; Dkt. No. 30 at 4. Defendant Lee, sued in her individual capacity, is a pediatric endocrinologist at UCSF. *Id.* ¶ 17. Defendant Ehrensaft, sued in her individual and official capacities, is co-director of the Center and is a developmental and clinical psychologist. *Id.* ¶¶ 18-19. Defendant Rosenthal, sued in his individual and official capacities, is also co-director of the UCSF Center and a Professor

Regents of the University of California ("Regents") "implemented a policy under which it may accept money in exchange for performing gender identity related surgery on a minor child without obtaining the necessary consent, while concealing any such activity from any disapproving interested person." *Id.* ¶ 15. He alleges that the individual defendants, acting as employees of the Regents or *de facto* state actors, are participants in and aided this "scheme" and that all defendants concealed the alleged scheme. *See id.* ¶¶ 15-29. He alleges seven causes of action: (1) 42 U.S.C. § 1983 - damages, deprivation of fundamental right to direct a minor child's medical care without due process and conspiracy to same; (2) 14th Amendment procedural due process violation; (3) fraud by concealment; (4) medical battery and civil conspiracy to same; (5) intentional infliction of emotional distress and civil conspiracy to same; and (6) negligent infliction of emotional distress. Plaintiff also seeks a declaratory judgment under 28 U.S.C. § 2201 that "a valid Court Order enjoining gender identity related surgery for a minor child without the parent's consent shall hereafter be considered a fundamental constitutional right, because it derives from the fundamental right to family unity found in the liberty clause of the 14th Amendment." *Id.* at 13-23.

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of Pediatrics at the UCSF School of Medicine. *Id.* ¶¶ 20-21. Defendant Orr, sued in his individual and official capacities, "is a California attorney, transgender activist, and was legal director" of the UCSF Center. *Id.* ¶¶ 22-23. According to Orr, he was an unpaid volunteer attorney and gave "his legal opinion to UCSF that the hormone suppressor treatment did not constitute a violation of the custody order." Dkt. No. 32-1 at 2, 4.

Plaintiff "suffered constitutional, emotional, and financial damages as a result of Defendants' scheme to perform gender identity related surgery on a minor child without obtaining the necessary consent." *Id.* ¶ 14. Plaintiff "was harmed emotionally" and "suffers severe anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame." *Id.* ¶ 95. He was also harmed financially as he "expended, and will continue to expend money for treatment for emotional distress." *Id.* ¶ 97.

* * *

On September 29, 2023, plaintiff filed an order to show cause in Contra Costa County Superior Court, the same court that issued the August 26, 2020 custody order. Dkt. No. 32-3, Ex. 1. Plaintiff requested an order to show cause why citees Christine Hudacko, her attorney Nathaniel Bigger, Minor's counsel Daniel Harkins, and UCSF should not be held in contempt for "willfully violating an order prohibiting gender identity related surgery." *Id.* The state court indicated that it did not have jurisdiction over the UCSF defendants or Orr. *See* Dkt. 50-2. The hearing on the order to show cause for contempt was continued in state court several times. On May 17, 2024, this Court held a hearing on defendants' motions to dismiss. That same day, plaintiff's counsel filed a status update indicating that plaintiff filed a notice of withdrawal of the contempt actions in state court. *See* Dkt. No. 77. Because there are no longer pending state court proceedings involving the custody order, the Court does not address the argument raised by several of the defendants that this Court should abstain.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This "facial plausibility" standard requires the plaintiff to allege facts that add up to "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While courts do not require "heightened fact pleading of specifics," a plaintiff must allege facts sufficient to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555, 570.

In deciding whether the plaintiff has stated a claim upon which relief can be granted, the court must assume that the plaintiff's allegations are true and must draw all reasonable inferences in the plaintiff's favor. *Usher*, 828 F.2d at 561. However, the court is not required to accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Sciences Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). A pleading must contain allegations that have "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 555 U.S. at 556). Dismissal under Rule 12(b)(6) is also proper when the complaint

"lacks a cognizable legal theory" or "fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple, Inc.*, 729 F.3d 953, 959 (9th Cir. 2013). Exhibits attached to the complaint, documents incorporated by reference, and matters properly subject to judicial notice are considered when reviewing the sufficiency of a complaint. *In re NVIDIA Corp. Security Litigation*, 768 F.3d 1046, 1051 (9th Cir. 2014).

If the Court dismisses the complaint, it must then decide whether to grant leave to amend. The Ninth Circuit has "repeatedly held that a district court should grant leave to amend … unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (citations and internal quotation marks omitted). Furthermore, "[d]ismissal of a *pro se* complaint without leave to amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (citation omitted).

DISCUSSION

I. Requests for Judicial Notice

Defendant Orr requests judicial notice of the fact that a hearing on an order to show cause for contempt was set for February 2, 2024 in Contra Costa County Superior Court Case No. MSD19-05641, *Christine Marie Hudacko, Petitioner v. Edward Allyn Hudacko, Respondent*, at the request of plaintiff arising out of the alleged violation of that court's August 26, 2020 custody order related to its prohibition of gender

identity related surgery. Dkt. No. 32-2. The Court DENIES this request for judicial notice because plaintiff has since withdrawn the state court contempt actions and the Court thus does not rely on these documents in its Order. Plaintiff also requests judicial notice of the Order to Show Cause for Contempt filed on September 29, 2023. Dkt. No. 49-1, Ex. A; Dkt. No. 50-2, Ex. A. The Court likewise DENIES this request.

Defendants Lee, Ehrensaft, and Rosenthal request judicial notice that Minor is no longer a minor and is presently over the age of 18 based on exhibits attached to the complaint; the August 26, 2020 custody order attached to the complaint; and the fact that the Regents of the University of California is a public entity. Dkt. No. 36-1. The Court GRANTS these requests for judicial notice pursuant to Rule § 201.

Defendants Bigger and Underhill request judicial notice of a March 29, 2023 judgment in the marriage dissolution proceedings between plaintiff and Underhill filed in Contra Costa Superior Court, Case No. D19-05641, including its attachments. Dkt. No. 37-1. Bigger and Underhill also request judicial notice of a February 25, 2022 order in the marriage dissolution proceedings, Case No. MSD 19-05641. *Id.* The Court GRANTS these requests for judicial notice pursuant to Rule § 201.

Plaintiff requests judicial notice of numerous other documents. Dkt. No. 49-2; Dkt. No. 50-1; Dkt. No. 40-1.[6] Some of these documents were attached to complaint and are thus already under consideration by the Court. The Court DENIES the requests to take

[6] These requests are identical.

judicial notice of the documents that were not attached to the complaint based on relevancy and because some are sources whose accuracy reasonably can be questioned.

In his opposition to several of the motions to dismiss, plaintiff contends that the supprelin implant Minor received was a surgery as a matter of law and as a judicially noticeable fact. Dkt. No. 49 at 8; Dkt. No. 50 at 14-15; Dkt. No. 40 at 17-18. The Court disagrees. This case will turn on whether the implant was "gender identity related surgery" under the custody order that required "a written agreement by both parties", or "services provided by UCSF as to [Minor's] gender identity," including "hormone therapy," that the custody order specifies Minor "shall be permitted to pursue … if recommended by UCSF." Compl., Ex. A at ECF 7. This determination will be made on the merits, not at the pleadings stage.

In defendants' March 28, 2024 status report regarding the then pending state court proceedings, defendants "advised" the Court that Minor filed a petition for recognition of change of gender and sex identifier in Contra Costa County Superior Court, and that an order was issued on June 12, 2023 recognizing change of gender and sex identifier and for name change and issuance of new certificates. Dkt. No. 72. Defendants attached redacted copies of the petition and order. Plaintiff objected to the filing of the June 12, 2023 order on the grounds that it is non-responsive, irrelevant, and inflammatory. Dkt. No. 75. The Court does not consider this material because it is outside the scope of the Court's orders requesting

status updates about the then pending state court contempt proceedings. *See* Dkt. Nos. 60, 64, 69.

II. Federal Claims

A. Whether Harkins, Bigger, and Underhill Are *De Facto* State Actors

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). "Section 1983 does not confer rights, but instead allows individuals to enforce rights contained in the United States Constitution and defined by federal law." *Vinson v. Thomas*, 288 F.3d 1145, 1155 (9th Cir. 2002). Only a state actor can be liable under 42 U.S.C. 1983. *See American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) ("Like the state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful") (internal quotation marks and citations omitted). Dismissal of a § 1983 claim on a Rule 12(b)(6) motion "is proper if the complaint is devoid of factual allegations that give rise to a plausible inference of either element." *Naffe v. Frey*, 789 F.3d 1030, 1036 (9th Cir. 2015).

The Court addresses the second element, "under color of state law," first. The parties agree that Harkins, Bigger, and Underhill are a private actors; their dispute centers on whether these defendants are *de facto* state actors such that a § 1983 claim can be brought against them. The Supreme Court "has

articulated four tests for determining whether a private individual's actions amount to state action: (1) the public function test; (2) the joint action test; (3) the state compulsion test; and (4) the governmental nexus test." *Franklin v. Fox*, 312 F.3d 423, 445 (9th Cir. 2002). Plaintiff alleges that Harkins, Bigger, and Underhill are *de facto* state actors under the joint action test. *See* Compl. ¶¶ 49-58.

"Under the joint action test, courts examine whether state officials and private parties have acted in concert in effecting a particular deprivation of constitutional rights." *Franklin*, 312 F.3d at 445 (internal quotation marks and citations omitted). "The test focuses on whether the state has so far insinuated itself into a position of interdependence with the private actor that it must be recognized as a joint participant in the challenged activity." *Id.* "Joint action therefore requires a substantial degree of cooperative action." *Collins v. Womancare*, 878 F.2d 1145, 1154 (9th Cir. 1989). A plaintiff may demonstrate joint action by showing the existence of a conspiracy or that the "private party is a willful participant in joint action with the State or its agents." *Id.* (internal quotations marks and citations omitted). "To prove a conspiracy between the state and private parties under section 1983, [plaintiffs] must show an agreement or meeting of the minds to violate constitutional rights." *United Steelworkers of America v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-51 (9th Cir. 1989); *see also Franklin*, 312 F.3d at 445 ("To be liable as a co-conspirator, a private defendant must share with the public entity the goal of violating a plaintiff's constitutional rights").

Plaintiff alleges that the Regents, whom the parties agree is a state actor, and the "nominally private actors"—Harkins, Bigger, and Underhill—were "intertwined in a symbiotic relationship" involving a "scheme" to perform "gender identity related surgery" without plaintiff's consent. Compl. ¶¶ 12, 52, 54. Plaintiff further alleges that this plan "included an agreement to conceal the plan" from plaintiff. *Id.* ¶¶ 12, 54. Plaintiff also alleges that the "Regents insinuated itself into a position of interdependence with the nominally private actors, as Defendants each got what they wanted by formulating, concealing and executing the scheme." *Id.* ¶ 57. These are conclusory allegations devoid of specific facts this Court need not accept as true. *See In re Gilead Sciences Sec. Litig.*, 536 F.3d at 1055.

Plaintiff alleges the following facts with respect to defendant Harkins, the Minor's court-appointed attorney: Harkins was aware of the provision in the custody order about no surgery without plaintiff's consent; Harkins accepted "money in exchange for concealing the scheme" from plaintiff; and "the professionals," which the Court construes to include Harkins, secured "financial goals, i.e. getting a nice paycheck, [that] could not have been realized without the scheme." Compl. ¶¶ 26-27, 57, 72, 79. Drawing all inferences in plaintiff's favor, the Court cannot reasonably infer that the Regents and Harkins acted in concert or jointly participated in a scheme or agreement to deprive plaintiff of his constitutional rights. Plaintiff does not allege that Harkins received any money from or paid any money to the Regents or

their agents.[7] Nor does plaintiff allege that Harkins communicated with the Regents or UCSF personnel about the procedure prior to its occurrence, that Harkins had any involvement with the Regents, or that the Regents controlled in any way Harkins's court-appointed representation of Minor.[8] Plaintiff also alleges no facts suggesting that Harkins and the Regents had a "meeting of the minds" to violate plaintiff's constitutional rights to support his conclusory allegations of a conspiracy. *See Phelps Dodge Corp.*, 865 F.2d at 1540-51.

Plaintiff's primary argument in opposition is that it is plausible that Harkins "participated and was paid for having conversations regarding the planning, execution and concealment of the Supprelin Implant" because Harkins's billing records indicate he had conversations with various Defendants during the time when the surgery was being planned. Dkt. No. 40 at 7. Plaintiff points to a billing invoice from Harkins's law office, about which plaintiff presents numerous speculative inferences drawn from one line billing entries. *See* Compl., Ex. F; Dkt. No. 40 at 9-10. The invoice details professional services from June 29,

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[7] The custody order specifies that Harkins is to be paid jointly by plaintiff and Underhill. Compl., Ex. A at ECF 7 ("The parties agree and the court orders that Mr. Harkins shall continue to serve as minor's counsel … Costs of minor's counsel shall be paid for by Father 70% and by Mother 30%).

[8] The Court further notes that to the extent plaintiff seeks to use Harkins's status as Minor's court-appointed attorney to support joint action, an argument plaintiff does not raise, the Ninth Circuit has held that a child's state-appointed guardian is not a state actor under the joint action test. *Kirtley v. Rainey*, 326 F.3d 1088, 1093-94 (9th Cir. 2003).

2020 through March 30, 2022. While the names of some other named defendants appear, the Court cannot reasonably infer from this invoice that Harkins acted in concert with the Regents to deprive plaintiff of his constitutional rights. The Court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences" such as the assertions raised in plaintiff's opposition that "Harkins receiving payment is contingent on his participation in the scheme" or that "Harkins was busy scheming with the other Defendants during February – June 2021 to plan, execute and conceal the Supprelin Implant surgery." *See Usher*, 828 F.2d at 561; *In re Gilead Sciences Sec. Litig.*, 536 F.3d at 1055.

Plaintiff alleges the following facts with respect to Bigger, attorney for Underhill: Bigger "knew about the no surgery injunction" and accepted money "in exchange for advising [Underhill] that unconsented gender identity related surgery on a minor was legal." Compl. ¶¶ 3, 24. Plaintiff alleges the following facts with respect to Underhill: Underhill "knew about the no surgery injunction" and employed the other defendants "to achieve her goal of obtaining gender identity related surgery on the minor child" without plaintiff's consent. Compl. ¶¶ 3, 28.

Drawing all inferences in plaintiff's favor, the Court likewise cannot reasonably infer that the Regents and Bigger or Underhill acted in concert or jointly participated in a scheme or agreement to deprive plaintiff of his constitutional rights. With respect to Bigger, plaintiff does not allege that Bigger received any money from or paid any money to the

Regents or their agents. Nor does plaintiff allege that Bigger communicated with the Regents or UCSF personnel about the procedure prior to its occurrence, that he had any involvement with the Regents, or that the Regents controlled in any way Bigger's representation of Underhill. Plaintiff also alleges no facts suggesting that Bigger and the Regents had a "meeting of the minds" to violate plaintiff's constitutional rights to support his conclusory allegations of a conspiracy. *See Phelps Dodge Corp.*, 865 F.2d at 1540-51. With respect to Underhill, the Court cannot reasonably infer from the extensive exhibits attached to the complaint that Underhill intended to violate the custody order or worked in concert with the UCSF defendants to violate it.

In his opposition, plaintiff points to Exhibit G to his complaint, which consists of June 8, 2021 progress notes from defendant Rosenthal, professor of pediatrics at USCF medical school. *See* Compl., Ex. G at ECF 28. The progress notes state: "Pt's mother in contact with Asaf Orr. Mother and pt have separate attorneys who are navigating complex family situation; in particular insurance issues, as pt is currently using father's insurance and father is not supportive of pt's gender care." *Id.* The notes further state: "Mother is working with her attorney, Minor's attorney and Asaf Orr, JD—everyone is working together to achieve resolution in near future." *Id.* at ECF 29. The Court cannot reasonably construe this to be "evidence" of a conspiracy; it reflects that existence of a family law dispute and does not plausibly allege that the parties shared with the Regents a "goal" of violating plaintiff's constitutional rights. *See*

Franklin, 312 F.3d at 445. These progress notes further reinforce plaintiff's allegation that he and Underhill were "embroiled in a high-conflict Family Law case." Compl. ¶ 31. With respect to Bigger, the notes do not represent that he was at this office visit. Plaintiff also points to the October 18, 2021 email from Underhill to plaintiff. *See* Compl, Ex. C at ECF 14. The Court cannot reasonably infer from this email that Underhill intended to violate the custody order and plaintiff's constitutional rights.

Because Harkins, Bigger, and Underhill are not *de facto* state actors, the Court dismisses the federal claims against these three defendants. However, because plaintiff filed his complaint *pro se*, the Court will grant him leave to amend to allege additional facts.

B. Whether Defendant Orr and the UCSF Defendants Are Immune Under the Eleventh Amendment

1. Whether the Regents Are Immune

"Under the eleventh amendment, agencies of the state are immune from private damage actions or suits for injunctive relief brought in federal court." *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988) (citations omitted). To determine whether a governmental agency is an arm of the state, courts must examine the following factors: "whether a money judgment would be satisfied out of state funds, whether the entity performs central governmental functions, whether the entity may sue or be sued, whether the entity has the power to take property in its own name or only the name of the state, and the

corporate status of the entity." *Id.* Courts look to the way state law treats the entity to determine these factors. *Id.*

Plaintiff asserts that defendants have not established that any of the *Mitchell* factors weigh in favor of them. Dkt. No. 49 at 11. Plaintiff acknowledges that the Regents are generally considered state actors in case law, but contends that the first *Mitchell* factor weighs the other way in this case. *Id.* Plaintiff points to no case law indicating that the Regents are not an arm of the state for purposes of Eleventh Amendment immunity, and the Ninth Circuit has made clear that "the University of California and the Board of Regents are considered to be instrumentalities of the state for purposes of the Eleventh Amendment." *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982); *see also Armstrong v. Meyers*, 964 F.2d 948, 949-50 (9th Cir. 1992) ("The Regents, a corporation created by the California constitution, is an arm of the state for Eleventh Amendment purposes, and therefore is not a 'person' within the meaning of section 1983"); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443 (9th Cir. 1989) ("It has long been established that [University of California at Los Angeles] is an instrumentality of the state for purposes of the Eleventh Amendment"); *Regents of the University of California v. Doe*, 519 U.S. 425, 431 (1997) ("[I]t is the entity's potential legal liability, rather than its ability or inability to require a third party to reimburse it, or to discharge the liability in the first instance, that is relevant"); *Doe v. Lawrence Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997) (holding on remand that because "the

element of State liability is the single most important factor in determining whether an entity is an arm of the state … we conclude that the University [of California] is an arm of the State of California" and "immune from suit in federal court by reason of the Eleventh Amendment"); *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d at 198, 201 (9th Cir. 1988) (holding that "California cases demonstrate that California state colleges and universities are 'dependent instrumentalities of the state'" and that under California law, the Los Angeles Community College District is a state entity that possesses Eleventh Amendment immunity from section 1983 claims for damages and injunctive relief). Plaintiff's claims against the Regents of the University of California are thus dismissed on this basis.

2. Whether the Individual Defendants Are Immune

"Eleventh Amendment immunity extends to actions against state officers sued in their official capacities because such actions are, in essence, actions against the governmental entity of which the officer is an agent." *Jackson*, 682 F.2d at 1350 (9th Cir. 1982). However, "state officials sued in their individual capacities are 'persons' for purposes of § 1983." *Hafer v. Melo*, 502 U.S. 21, 23 (1991). While suits against state officials in their official capacity are treated as suits against the State, personal-capacity suits "seek to impose individual liability upon a government officer for actions taken under color of state law." *Id.* at 25. "[T]o establish *personal* liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a

federal right." *Id.* (citations and internal quotation marks omitted) (emphasis in original). "'Acting in their official capacities' is best understood as a reference to the capacity in which the state officer is sued, not the capacity in which the officer inflicts the alleged injury." *Id.* at 26. A "suit for money damages may be prosecuted against a state officer in his individual capacity for unconstitutional or wrongful conduct fairly attributable to the officer himself, so long as the relief is sought not from the state treasury but from the officer personally." *Alden v. Maine*, 527 U.S. 706, 757 (1999). Officials "sued in their personal capacities, unlike those sued in their official capacities, may assert personal immunity defenses such as objectively reasonable reliance on existing law." *Hafer*, 502 U.S. at 25.

Although there is some inconsistency throughout the complaint, drawing all inferences in plaintiff's favor, the Court finds it sufficiently clear that plaintiff is suing Orr and the individual UCSF defendants in both their individual and official capacities. *See* Compl. ¶¶ 17-21, 23. The Eleventh Amendment does not bar a suit against these individual defendants in their individual capacities. *See id.* at 31 ("Insofar as respondents seek damages against Hafer personally, the Eleventh Amendment does not restrict their ability to sue in federal court"). All claims against the individual defendants in their official capacities are dismissed based on Eleventh Amendment immunity.[9]

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[9] Orr contends that the complaint contains no factual allegations that would support the contention that he acted in any capacity other than his official capacity as Legal Director of the UCSF Center. Dkt. No. 32 at 13, 4 n.2, 8 n.3. However, Orr cites no legal

C. Whether Plaintiff's Section 1983 Claims Are Time Barred

Claims under 42 U.S.C. § 1983 filed in California are governed by California's two-year statute of limitations for personal injury actions. *Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004). Plaintiff alleges that he first learned about the implant procedure on October 18, 2021 via e-mail. Compl. ¶ 91, Ex. C. He filed suit on October 18, 2023, exactly two years later. Plaintiff's section 1983 causes of action are thus not time barred.

D. Whether Plaintiff's First Cause of Action (Violation of Substantive Due Process Rights) is Adequately Pled

It is undisputed that Orr and the individual UCSF defendants are state actors. Thus, as to these defendants, the Court must reach the issue of whether plaintiff has adequately pled a substantive due process claim. Plaintiff alleges a violation of his "fundamental right to parent." Compl. ¶ 1. The Supreme Court has declared that parents have a "fundamental right . . . to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

Plaintiff alleges that defendants intentionally violated the child custody order, which in turn violated his constitutional right to direct the upbringing of his child. Compl. ¶ 61. The Court finds it premature to determine whether a violation of the custody order, if

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authority in support of his position that this means plaintiff cannot sue him in his individual capacity.

proven, would rise to the level of a violation of plaintiff's constitutional right "to make decisions concerning the care, custody, and control" of his child and declines to dismiss on this basis at the pleadings stage.

E. Whether Plaintiff's Claims Are Time Barred Under MICRA

The UCSF defendants contend that plaintiff's cause of action for violation of the Fourteenth Amendment and many of his state law claims are barred by the California's Medical Injury Compensation Reform Act ("MICRA")'s one-year statute of limitations. Dkt. No. 36 at 22. "Unlike most other personal injury actions, professional negligence actions against health care providers must be brought within 'three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.'" *Flores v. Presbyterian Intercommunity Hosp.*, 63 Cal. 4th 75, 79 (2016) (quoting Cal. Civ. Proc. Code § 340.5).[10] "When a cause of action is asserted against a health care provider on a legal theory other than medical malpractice, the courts must determine whether it is nevertheless based on the 'professional negligence' of the health care provider so as to trigger MICRA." *Smith v. Ben Bennett, Inc.*, 133 Cal. App. 4th 1507, 1514 (2005). Courts must look past the labels the plaintiff uses and examine the specific conduct alleged to determine

[10] Personal injury actions "generally must be filed within two years of the date on which the challenged act or omission occurred." *Flores*, 63 Cal. 4th at 79 (citing Cal. Civ. Proc. Code §335.1).

what limitation period applies. *Larson v. UHS of Rancho Springs, Inc.*, 230 Cal. App. 4th 336, 340 (2014). The parties dispute whether plaintiff's claims sound in professional negligence.

The California Code of Civil Procedure defines "professional negligence" as:

> [A] negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital.

Cal. Civ. Proc. Code § 340.5. The MICRA statute of limitations "applies only to actions alleging injury suffered as a result of negligence in rendering the professional services that hospitals and others provide by virtue of being health care professionals: that is, the provision of medical care to patients." *Flores*, 63 Cal. 4th at 88.

Defendants contend that the crux of plaintiff's Fourteenth Amendment claim "relates to obtaining adequate informed consent before a minor undergoes a medical procedure" and consequently "the nature of plaintiff's case arises out of the tort of professional negligence as it relates to consent for a medical procedure and is therefore governed by MICRA." Dkt. No. 36 at 23. Plaintiff contends that his claims against defendants are not professional negligence claims. Dkt. No. 49 at 13. The Court agrees with plaintiff that

his claims do not sound in professional negligence as defined in section 340.5. All the cases the parties cite involve injury to a patient while receiving medical care. Plaintiff does not allege any injury resulting from negligence in the rendering of health care services; rather, he claims injury resulting from "Defendants' scheme to perform gender identity related surgery on a minor child without obtaining the necessary consent." Compl. ¶ 14. Defendants' attempt to expand the definition of "professional negligence" does not find support in the case law. The Court thus finds that the MICRA statute of limitations does not apply to plaintiff's claims as pled. With respect to the federal claims, the Ninth Circuit has also held that claims for violations of federal constitutional rights pursuant to 42 U.S.C. § 1983 are not subject to MICRA. *Ellis v. City of San Diego, Cal.*, 176 F.3d 1183, 1191 (9th Cir. 1999).

F. Whether Plaintiff Has Adequately Pled a Fourteenth Amendment Due Process Violation

To state a procedural due process claim, a plaintiff must allege that there was "(1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections." *Brewster v. Bd. of Educ. of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998). "[T]the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990) (emphasis removed).

Plaintiff contends that defendants deprived him of his "constitutional parental rights" without a notice and a hearing by "secretly submitting [his] minor child to surgery without [his] consent." Dkt. No. 49 at 16. Defendants contend that a hearing is only required when the state compels the medical care without parental consent and plaintiff has failed to allege facts showing defendants compelled Minor to receive medical treatment. Dkt. No. 36 at 21; Dkt. No. 58 at 12. "Courts have characterized the right to familial association as having both a substantive and procedural component." *Keates v. Koile*, 883 F.3d 1228, 1236 (2018). As discussed above, plaintiff has pled a violation of his fundamental liberty interest "to make decisions concerning the care, custody, and control" of his child. *See Troxel*, 530 U.S. at 66. The question here is whether plaintiff has plausibly alleged that he was denied adequate procedural protections.

In support of his position, plaintiff points to *Mueller v. Auker*, which held on appeal of summary judgment that parents "generally have a procedural right to a judicial hearing if the State seeks to compel their minor child to undergo a medical treatment over their objection." 576 F.3d 979, 995 (9th Cir. 2009). The court further held that this right "is not absolute" and when the State has "reasonable cause to believe that the child is in imminent danger . . . a State has the authority without prior judicial authorization to compel a minor child to undergo specific medical treatment over parental objections." *Id.* (citation omitted). The facts and circumstances of *Mueller* are manifestly distinguishable from those of the instant case. In *Mueller*, the mother of a five-week-old infant

consented to the performance of certain medical procedures for her infant, but not others. *Id.* at 983. In response to her refusal to consent to the procedures recommended by the doctors, a doctor contacted the hospital social worker, who decided to contact Child Protective Services ("CPS") and law enforcement. *Id.* at 984. A police detective spoke to the mother on three different occasions and attempted to convince her to consent to the treatment; each time she refused, without consulting her husband. *Id.* at 985. Later, after the infant's temperature rose to 101 degrees, a police detective informed the mother that he was declaring the child in imminent danger and turning her over to State custody. *Id.* Soon thereafter, a police detective presented the mother with a written notice of a post-deprivation hearing. *Id.* After obtaining consent from CPS, doctors performed the medical procedure. *Id.* at 986.

In contrast, here there are no allegations plausibly suggesting that any of the state actor defendants *compelled Minor* to undergo the implant procedure. To the contrary, the marriage dissolution proceeding documents that the Court has taken judicial notice of suggest that Minor wanted to seek medical treatment. *See* Dkt. No. 37-1, Ex. A at ECF 25.

The other cases plaintiff cites do not support his position that he was denied procedural protections that were due here. *Keates* involved claims stemming from CPS's actions to remove a minor child from her mother's custody following the minor's hospitalization for depression and suicidal ideation. 883 F.3d at 1232. There, the Ninth Circuit held that "the rights of parents and children to familial association … are

violated if a state official removes children from their parents without their consent, and without a court order" unless there is reasonable cause to believe the child is in imminent danger. *Id.* at 1237-38. *Ram v. Rubin* similarly held that it is unlawful to take a child into state custody and interfere with a parent's custodial rights without notice and a hearing unless the child is in imminent danger of harm. 118 F.3d 1306, 1310 (9th Cir. 1997). Here, Minor was never taken into state custody.

The Court further concludes from the extensive exhibits attached to the complaint that this deficiency could not be cured with the pleading of additional facts, and thus dismisses the Fourteenth Amendment procedural due process claim against all the defendants without leave to amend.

* * *

In sum, plaintiff's first cause of action, a section 1983 claim for violation of his substantive due process rights, is dismissed with leave to amend as to defendants Harkins, Bigger, and Underhill on the basis that they are not *de facto* state actors and is not dismissed as to defendant Orr (in his individual capacity) and the individual UCSF defendants (in their individual capacities). All claims against the Regents are dismissed based on Eleventh Amendment immunity. Plaintiff's second cause of action for a violation of his procedural due process rights is dismissed without leave to amend as to all defendants for failure to state a claim. Because the Court does not dismiss all the federal claims, the Court will address

whether plaintiff has adequately pled his state law causes of action.

III. State Law Claims

A. Arguments Raised by Defendant Orr and the UCSF Defendants

Orr contends that the alleged communication between him and UCSF had a "reasonable connection" to the state court proceedings, and is therefore "absolutely privileged under Civil Code section 47(b)." Dkt. No. 32 at 10.

The section 47(b) "litigation privilege precludes liability arising from a publication or broadcast made in a judicial proceeding or other official proceeding." *Digerati Holdings, LLC v. Young Money Entertainment, LLC*, 194 Cal. App. 4th 873, 888-89 (2011). "The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action." *Silberg v. Anderson*, 50 Cal. 3d 205, 212 (1990). "The privilege is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards." *Action Apartment Assn., Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1241 (2007) (internal quotation marks and citation omitted). To be privileged, a statement must be "reasonably relevant" to pending or contemplated litigation. *Neville v. Chudacoff*, 160 Cal. App. 4th 1255, 1266 (2008). The privilege applies to all torts except malicious prosecution. *Silberg*, 50 Cal. 3d at 212. The purposes

of the privilege "are to afford litigants and witnesses free access to the courts without fear of being harassed subsequently by derivative tort actions, to encourage open channels of communication and zealous advocacy, to promote complete and truthful testimony, to give finality to judgments, and to avoid unending litigation." *Jacob B. v. County of Shasta*, 40 Cal. 4th 948, 955 (2007) (citation and internal quotation marks omitted). "Another purpose is to promote effective judicial proceedings by encouraging full communication with the courts." *Id.* (citation and internal quotation marks omitted).

The Court cannot find the alleged statements made by Orr privileged under section 47(b) as a matter of law. Plaintiff alleges that Orr "accepted money in exchange for advising [d]efendants that unconsented gender identity related surgery on a minor was legal." Compl. ¶¶ 22-23, 77. Orr was not involved in the state court marital dissolution and child custody proceedings. Nor were the UCSF defendants. Orr allegedly offered legal advice related to the child custody order after it had been entered by the state court. The litigation privilege "does not apply to statements made outside of the courtroom to nonparties unconnected to the proceedings." *Begier v. Strom*, 46 Cal. App. 4th 877, 882 (1996). Furthermore, the statements allegedly made by Orr do not clearly fit within the purposes of the privilege as enunciated by the California Supreme Court.

Orr contends in his reply that the "reasonable inference" is that Orr's "alleged advice to the Regents was given with the contemplation that [plaintiff] would take legal action if the Supprelin hormone

therapy constituted a violation of the state court custody order" such that any alleged statements were prelitigation statements made in connection with a proposed litigation. Dkt. No. 57 at 3-4. California courts "have held a prelitigation statement is protected by the litigation privilege … when the statement is made in connection with a proposed litigation that is contemplated in good faith and under serious consideration." *Aronson v. Kinsella*, 58 Cal. App. 4th 254, 262 (1997) (citations and internal quotation marks omitted). There is no indication in plaintiff's complaint that there was "proposed litigation" when Orr gave the alleged legal advice to the UCSF Center, and a "bare possibility" of litigation is not enough for the privilege to apply. *See Edwards v. Centex Real Estate Corp.*, 53 Cal. App. 4th 15, 33 (1997) ("the 'bare possibility' that a judicial proceeding 'might be instituted' in the future 'is not to be used as a cloak to provide immunity' for fraud or other tortious conduct when the possibility has not ripened into a *proposed* judicial proceeding that is contemplated in good faith and under serious consideration") (quoting Rest. 3d Torts § 588).

Orr separately contends that except for the cause of action for fraud by concealment, plaintiff's state law causes of action against him are barred by the one-year statute of limitations in California Code of Civil Procedure section 340.6. Dkt. No. 32 at 11. Section 340.6 provides that:

> An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year

> after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first.

Cal. Civ. Proc. Code § 340.6(a). The California Supreme Court has held that section 340.6(a)'s time bar "applies to claims whose merits necessarily depend on proof that an attorney violated a professional obligation in the course of providing professional services." *Lee v. Hanley*, 61 Cal. 4th 1225, 1237-38 (2015). A "professional obligation" is "an obligation that an attorney has by virtue of being an attorney, such as fiduciary obligations, the obligation to perform competently, the obligation to perform the services contemplated in a legal services contract into which the attorney has entered, and the obligations embodied in the Rules of Professional Conduct." *Id.* at 1237. "[T]he question is whether the claim, in order to succeed, necessarily depends on proof that an attorney violated a professional obligation as opposed to some generally applicable nonprofessional obligation." *Id.* at 1238. There is no requirement in the statute that the plaintiff was a client of the attorney. *Yee v. Cheung*, 220 Cal. App. 4th 184, 195 (2013). Orr has not explained how the merits of plaintiff's claims depend on proof that Orr violated a professional obligation, nor what that professional obligation was. The Court thus cannot conclude as a matter of law on the pleadings that section 340.6(a) bars plaintiff's claims.

Orr and the individual UCSF defendants contend that plaintiff's claim for fraud by concealment is

barred by California Government Code § 822.2. Dkt. No. 32 at 14; Dkt. No. 36 at 24. This code section provides: "A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation … unless he is guilty of actual fraud, corruption or actual malice." Cal. Gov. Code § 822.2. The Government Code does not define "misrepresentation," but California courts "have assumed that the immunity includes all types of fraud and deceit cases, including fraudulent concealment." *Adkins v. State of California*, 50 Cal. App. 4th 1802, 1818 (1996) (internal quotation marks and citations omitted). Immunity under this statute is "not absolute" and "applies only when the negligent or intentional wrongdoing involves interferences with financial or commercial interests." *Id.* (citations omitted). It "does not apply to misrepresentations involving risk of physical harm." *Id.* (internal quotations marks and citation omitted).

Although plaintiff emphasizes the financial nature of the conduct—that the defendants accepted money in furtherance of their "scheme"—he has alleged emotional harm to himself in additional to actual damages for his expenses. The Court cannot conclude as a matter of law on the pleadings that the harm plaintiff alleges he suffered involved an interference with his financial or commercial interests so as to be covered by § 822.2. *See Michael J. v. Los Angeles County Dept. of Adoptions*, 201 Cal. App. 3d 859, 872 (1988) ("Although appellants suffer a financial loss in the sense that they have incurred, and will continue to incur, substantial medical expenses, their loss did not result from a commercial transaction

with the County nor from the County's interference with a commercial transaction.").

B. Whether the State Law Causes of Action Should Be Dismissed for Failure to State a Claim

Defendants all argue that the state law claims should be dismissed due to failure to allege ufficient facts or failure to plead all required elements. The Court will now evaluate each state law claim in turn.

1. Fraud by Concealment (Third Cause of Action)

Plaintiff alleges that defendants "concealed their plan under which gender identity related surgery was to be performed" on Minor without his consent and agreed to "conceal the plan" from plaintiff. Compl. ¶ 89. Plaintiff further alleges that defendants "actively prevented" him from "discovering the scheme." *Id.* ¶ 90. The required elements of fraudulent concealment are: "(1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact." *Broge v. ALN Int'l, Inc.*, No. 17-CV-07131-BLF, 2018 WL 2197524, at *4 (N.D. Cal. May 14, 2018) (quoting *Graham v. Bank of Am., N.A.*, 226 Cal. App. 4th 594, 605-06 (2014)).

"There are four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts." *Hoffman v. 162 North Wolfe LLC*, 228 Cal. App. 4th 1178, 1186 (2014) (internal quotation marks and citation omitted). "The first circumstance requires a fiduciary relationship; each of the other three 'presupposes the existence of some other relationship between the plaintiff and defendant in which a duty to disclose can arise.'" *Deteresa v. American Broadcasting Companies, Inc.*, 121 F.3d 460, 467 (9th Cir. 1997) (quoting *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336-37 (1997)). "Such relationships 'are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances.'" *Id.* (quoting *LiMandri*, 52 Cal. App. 4th at 543-44). Examples are "seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual relationship." *Id.* (quoting *LiMandri*, 52 Cal. App. 4th at 337).

Plaintiff alleges no transaction or relationship with any of the defendants that could give rise to a duty to disclose. Furthermore, the Court finds that as to the attorney defendants—Harkins, Bigger, and Orr—there exists no relationship between them and plaintiff that could give rise to such a duty, even if

additional facts were plead. Harkins, Bigger, and Orr were attorneys representing other parties; they had no relationship at all with plaintiff. *See LiMandri*, 52 Cal. App. 4th at 338 (noting that an attorney's duty of undivided loyalty to his client supersedes any duty to disclose information to the plaintiff). As to the individual UCSF defendants and Underhill, plaintiff offers only conclusory allegations, devoid of specific facts. Accordingly, the motion to dismiss is granted as to plaintiff's fraudulent concealment claim, without leave to amend as to Bigger, Harkins, and Orr, and with leave to amend as to the individual UCSF defendants and Underhill. Because this is a fraud claim, plaintiff must meet the heightened pleading standard of Rule 9(b) in any amended complaint.[11]

2. Medical Battery and Civil Conspiracy to Same (Fourth Cause of Action)

Battery is "an intentional and offensive physical touching of a person who has not consented to the touching." *Conte v. Girard Orthopaedic Surgeons Med. Grp., Inc.*, 107 Cal. App. 4th 1260, 1266-67 (2003). "It

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[11] Orr contends that this claim also fails because plaintiff does not claim to suffer economic damages aside from those associated with his claimed emotional distress. Dkt. No. 57 at 10. Plaintiff pleads that he suffered emotional distress as well as financial harm due to the money he expended as "treatment for his emotional distress." Compl. ¶¶ 95, 97. "Although damages for emotional distress can be recovered in a fraud cause of action, such damages have been allowed only as an aggravation of other damages." *Nagy v. Nagy*, 210 Cal. App. 3d 1262, 1269 (1989). The cases the parties cite do not make clear whether or not the damages plaintiff alleges preclude a fraud claim at the pleadings stage, so the Court declines to dismiss on this basis.

is well settled that a physician who performs a medical procedure without the patient's consent commits a battery irrespective of the skill or care used." *Id.* at 1266-67. Medical battery also occurs where "a doctor obtains consent of the patient to perform one type of treatment and subsequently performs a substantially different treatment for which consent was not required." *Cobbs v. Grant*, 8 Cal. 3d 229, 239 (1972).

Defendants contend that plaintiff lacks standing for this claim because he was not the patient. Dkt. No. 36 at 27; Dkt. No. 57 at 12. Plaintiff contends in opposition to one of the motions that at the time Minor was a minor, so parental consent was required. Dkt. No. 49 at 23-24. Plaintiff cites *Orianthi v. St. Francis Med. Ctr.*, 2021 Cal. Super. LEXIS 92373 (Los Angeles County Superior Court May 25, 2021) in support. There, the complaint alleged that an infant did not consent and was silent as to whether any parent or guardian consented to the touching. *Id.* at *4. The court noted that a "newborn infant cannot directly consent or withhold consent." *Id.* Even if parental consent were required in this case, the exhibits attached to the complaint make clear that a parent, Minor's mother, did consent to the procedure. Plaintiff does not, and cannot allege that a medical procedure was performed on him. Accordingly, the Court finds that plaintiff cannot state a medical battery claim. The Court dismisses this claim against all defendants without leave to amend.

3. Intentional Infliction of Emotional Distress ("IIED") and Civil Conspiracy to Same (Fifth Cause of Action)

The elements of a prima facie case of IIED are: "(1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." *Little v. Stuyvesant Life Ins. Co.*, 67 Cal. App. 3d 451, 461 (1977) (internal quotation marks and citation omitted). To be "outrageous," the conduct "must be so extreme as to exceed all bounds of that usually tolerated in a civilized society," "of a nature which is especially calculated to cause, and does cause, mental distress." *Yau v. Santa Margarita Ford, Inc.*, 229 Cal. App. 4th 144, 160 (2014); *Cole v. Fair Oaks Fire Protection Dist.*, 43 Cal. 3d 148, 155 n.7 (1987). "It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, or whether it is necessarily so." *Fuentes v. Perez*, 66 Cal. App. 3d 163, 172 (1977). "Severe emotional distress" means "emotional distress of such substantial quality and enduring quality that no reasonable [person] in civilized society should be expected to endure it." *Hughes v. Pair*, 46 Cal. 4th 1035, 1051 (2009) (citation and internal quotation marks omitted).

Plaintiff has insufficiently pled that defendants intended to cause, or recklessly disregarded a

probability of causing, him emotional distress. The Court further finds that defendants' alleged conduct was not "outrageous." The custody order states that Minor "shall be permitted to pursue the services provided by UCSF as to [Minor's] gender identity, and shall be permitted to commence hormone therapy, if recommended by UCSF." Compl, Ex. A at ECF 7. It further states that Minor "will not be permitted to undergo any gender identity related surgery until they are 18 years of age, absent written agreement from both parties . . . or an order of the court." *Id.* Plaintiff's allegations and the extensive exhibits attached to his complaint indicate that the parties were in the midst of a family law dispute, UCSF had the state court custody order, and UCSF received legal advice about whether the implant procedure was permissible under the custody order. Having carefully considered the language in the child custody order, the documents attached to plaintiff's complaint, and the state court marriage dissolution and child custody proceedings record, the Court finds that the implant procedure could reasonably interpreted to be hormone therapy and not gender identity related surgery. As previously indicated, it is inappropriate for the Court to make a final determination on this issue on the pleadings. However, even if it is ultimately determined on the merits that the procedure was "gender identity related surgery" under the custody order, given the above considerations the conduct alleged is simply not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *See Cochran v. Cochran*, 65 Cal. App. 4th 488, 496 (1998) (citing Rest. 2d Torts § 46).

The Court finds that this deficiency in the complaint cannot be cured by amendment and dismisses the IIED claim as to all defendants without leave to amend.

4. Negligent Infliction of Emotional Distress ("NIED") (Sixth Cause of Action)

California courts treat NIED as a form of the tort of negligence with the following elements: "(1) duty; (2) breach of duty; (3) causation; (4) and damages." *Redd-Oyedele v. Santa Clara Cnty. Off. of Educ.*, No. 20-CV-00912-SVK, 2020 WL 7319404, at *4 (N.D. Cal. Dec. 11, 2020); *Burgess v. Superior Court*, 2 Cal. 4th 1064, 1072 (1992). "Whether a defendant owes a duty of care is a question of law." *Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.*, 48 Cal. 3d 583, 588 (1989). The California Supreme Court has indicated that when considering the existence of a duty, several factors "require consideration" including:

> the foreseeability of harm to the plaintiff, the degree of certainty that plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Christensen v. Superior Court, 54 Cal. 3d 868, 885-86 (1991) (internal quotation marks and citation omitted).

In California, the right to recover for emotional distress in an NIED claim "was initially limited to plaintiffs who suffered physical injury . . . with accompanying emotional distress," or plaintiffs who "were in the 'zone of danger' and suffered emotional trauma resulting in physical injury." *Jacoves v. United Merchandising Corp.*, 9 Cal. App. 4th 88, 107 (1992) (citing *Thing v. La Chusa*, 48 Cal. 3d 644, 651 (1989). "In 1968, the [California] Supreme Court expanded the right to recover emotional distress damages to foreseeable 'bystanders' who suffered emotional distress resulting in physical injury a result of witnessing an injury to another." *Id.* (citing *Dillon v. Legg*, 68 Cal. 2d 728 (1968)). "In 1980, the [California] Supreme Court again broadened the theory of recovery for emotional distress to 'direct victims' who were owed a duty by the defendant and who suffered emotional distress which was not accompanied by any physical injury." *Id.* at 107-08 (citing *Molien v. Kaiser Foundation Hospitals*, 27 Cal. 2d 916 (1980). "In a direct victim case, a plaintiff seeks damages for emotional distress resulting from a breach of duty owed the plaintiff which is 'assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of a relationship between the two.'" *Id.* (quoting *Marlene F.*, 48 Cal. 3d at 590)); *see also Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 985 (1993). In direct victim cases, the limits on bystander cases have no direct application and well-settled principles of negligence are invoked. *Ragland v. U.S.*

Bank National Assn., 209 Cal. App. 4th 182, 206 (2012). Plaintiff indicates in opposition to Orr's motion that he is proceeding on a direct victim theory. Dkt. No. 50 at 22.[12]

Plaintiff alleges that he was owed a duty by defendants to "refrain from performing gender identity related surgery on the minor" without his consent and that defendants breached their duty to plaintiff by "willfully violating the no surgery injunction" in the state court order. Compl. ¶¶ 124-125. This does not sufficiently allege that any of the defendants owed plaintiff a duty of care imposed on them as a matter of law or that arises out of the relationship between plaintiff and defendant. As to Harkins, Bigger, and Orr, the Court further finds that plaintiff cannot allege that these defendants owed him a duty of care because plaintiff was not their client, nor the third party in a transaction that was intended to benefit him. *See Skarbrevik v. Cohen*, 231 Cal. App. 3d 692, 702 (1991); *see also Goodman v. Kennedy*, 18 Cal. 3d 335, 344 (1976) ("To make an attorney liable for negligent confidential advice not only to the client who enters into a transaction in reliance upon the advice but also to the other parties to the transaction with whom the client deals at arm's length would inject undesirable self-protective reservations into the

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[12] Plaintiff cannot plausibly allege a bystander theory of liability because, even if the implant procedure resulted in "injury" to Minor, plaintiff cannot allege that he observed the procedure or was present at the scene of "injury" when he has alleged that he did not become aware of the procedure until months later. *See* Compl. ¶ 91; *Christensen*, 54 Cal. 3d at 884-85; *Schwarz v. Regents of University of California*, 226 Cal. App. 3d 149, 159 (1990).

attorney's counselling role"); *Mason v. Levy & Van Bourg*, 77 Cal. App. 3d 60, 66 (1978) ("It is fundamental to the attorney-client relationship that an attorney have an undivided loyalty to his clients. This loyalty should not be diluted by a duty owed to some other person[.]"). The NIED claims against Harkins, Bigger, and Orr are thus dismissed without leave to amend. As to the individual UCSF defendants and Underhill, the law is less clear, and although plaintiff has alleged insufficient facts, the Court cannot conclude that this deficiency could not be cured by amendment, so grants leave to amend. *Cf. Schwarz v. Regents of University of California,* 226 Cal. App. 3d 149, 159 (1990).

IV. Plaintiff's Request for a Declaratory Judgment

The Declaratory Judgment Act provides that "[i]n a case of actual controversy within its jurisdiction … any court of the United States … may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201. Plaintiff requests this Court issue a declaratory judgment "that a valid Court Order enjoining gender identity related surgery for a minor child without the parent's consent shall hereafter be considered a fundamental constitutional right, because it derives from the fundamental right to family unity found in the liberty clause of the 14th Amendment." Compl. ¶ 136.

Such a liberty interest has never before been declared by the Supreme Court, and this Court declines to do so in this case. "[D]istrict courts possess

discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites." *Wilton v. Seven Falls Co.*, 505 U.S. 277, 282 (1995), cited in *Takeda Pharmaceutical Co., Ltd. v. Mylan, Inc.,* 62 F. Supp. 3d 1115, 1122 (N.D. Cal. 2014). Plaintiff's request for a declaratory judgment as articulated in paragraph 136 of his complaint is dismissed without leave to amend.

CONCLUSION

For the forgoing reasons and for good cause shown, the Court GRANTS IN PART AND DENIES IN PART defendants' motions. All claims against the Regents, Orr in his official capacity, and Lee, Ehrensaft, and Rosenthal in their official capacities are dismissed without leave to amend based on Eleventh Amendment immunity. The Fourteenth Amendment procedural due process claim (second cause of action), medical battery claim (fourth cause of action), and IIED claim (fifth cause of action) are dismissed without leave to amend as to all defendants for failure to state a claim. The fraud by concealment claim (third cause of action) and NIED claim (sixth cause of action) are dismissed without leave to amend as to defendants Harkins, Bigger, and Orr.

The section 1983 substantive due process claim (first cause of action) is dismissed with leave to amend as to Harkins, Bigger, and Underhill on the basis that they are not *de facto* state actors. The fraud by concealment claim (third cause of action) and NIED claim (sixth cause of action) are dismissed with leave to amend as to Underhill, Lee, Ehrensaft, and

Rosenthal for failure to allege the required elements and failure to plead sufficient facts.

The motions to dismiss the section 1983 substantive due process claim (first cause of action) are DENIED as to Orr, Lee, Ehrensaft, and Rosenthal in their individual capacities. However, these defendants may raise qualified immunity defenses in subsequent proceedings.

Any amended complaint must be filed no later than August 30, 2024.

IT IS SO ORDERED.

Dated: August 20, 2024

/s/
SUSAN ILLSTON
United States District Judge

Appendix E

Case: 24-7360, 03/11/2026, DktEntry: 109.1

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD ALLYN HUDACKO, Plaintiff - Appellant, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA; JANET YI MAN LEE; DIANE EHRENSAFT; STEPHEN ROSENTHAL; ASAF ORR; NATHANIEL BIGGER; DANIEL HARKINS; CHRISTINE UNDERHILL, FKA Christine Hudacko, Defendants - Appellees.	No. 24-7360 D.C. No. 3:23-cv-05316-SI ORDER

Filed March 11, 2026

Before: Sidney R. Thomas, Jacqueline H. Nguyen, and Daniel A. Bress, Circuit Judges.

ORDER

The panel unanimously voted to deny the petition for panel rehearing. Judges Nguyen and Bress voted to deny the petition for rehearing en banc and Judge Thomas so recommended. The full court was advised of the petition for rehearing en banc. A judge

requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 40. Judge Tung did not participate in the deliberations or vote in this case.

The petitions for panel rehearing and rehearing en banc (Dkt. No. 91) are **DENIED.**

Appendix F

Case 3:23-cv-05316-SI Document 90
Filed: 08/30/24

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD ALLYN HUDACKO Plaintiff, v. STEPHEN ROSENTHAL, MD; JANET YI MAN LEE, MD; DIANE EHRENSAFT, PHD; ASAF ORR; NATHANIEL BIGGER; DANIEL HARKINS; CHRISTINE UNDERHILL; and DOES 1-100, Defendants.	**Case No.** 3:32-cv-05316-SI **SECOND AMENDED COMPLAINT FOR DAMAGES** **1) 42 U.S.C. § Deprivation of Fundamental Right to Direct a Minor Child's Medical Care Without Due Process and Conspiracy to Same** **2) Fraud by Concealment**

3) Negligence – Infliction of Emotional Distress

DEMAND FOR JURY TRIAL

Plaintiff Edward Allyn Hudacko ("Hudacko") brings this action to enforce his fundamental constitutional rights and seeks compensation for constitutional, emotional and financial injuries inflicted upon him when Defendants performed a life-altering, highly experimental gender-identity related surgery on his minor son without his consent. Plaintiff alleges as follows:

CASE SUMMARY

1. Hudacko's right to prohibit any gender identity related surgery on his son is a fundamental constitutional right arising under the Liberty Clause of the Fourteenth Amendment to the United States Constitution.

2. Plaintiff's fundamental right was explicitly reiterated in an August 2020 Court-Ordered Injunction that prohibited any gender-identity related surgery on his then minor son S.H. without Hudacko's consent ("NO SURGERY INJUNCTION").

3. As part of a joint agreement between Defendants that Plaintiff was not aware of until it was too late, a Supprelin Implant was surgically implanted into S.H. as a form of "hormone therapy", as part of so-called "gender affirming care." Such use of Supprelin is for the purpose of stopping adolescent puberty

which is off label use and was done without the consent of Plaintiff. ("CONSPIRACY or SCHEME")

4. Like all forms of so-called "gender-affirming care" use of the Supprelin Implant constitutes medical experimentation. Without informed consent, such experimentation on minors violates both federal and state laws.

5. As detailed herein, the entire transgender industry that promotes "gender affirming care" is predicated on dishonest – indeed fraudulent – set of assertions that such form of medical care is "safe, effective, and medically necessary" for minors who suffer from the DSM 5 recognized medical condition of "gender dysphoria", or those actually suffering from gender-related stress, when in fact recent reports show that it is when in fact use of such procedures or any stage of gender affirming care is medically dangerous to minors.

6. Defendants Stephan Rosenthal (co-director of the clinic that offered "gender affirming care" to Hudacko's son), Diane Ehrensaft (psychologist and the other clinic co-director who helped convince Hudacko's son and the Defendant Underhill that "gender affirming care" was necessary, safe and effective), and Janet Lee (the surgeon who performed the surgery) are all members of the World Professional Association for Transgender Health ("WPATH").

7. WPATH presents itself as a 501(c)(3) educational and scientific nonprofit dedicated to using the principles of "Evidence Based Medicine" to

establish the "standard of care" for "treatment" of transgender and gender non-conforming people.

8. However, WPATH is actually a pseudo-scientific political advocacy organization whose ulterior motives are to maximum revenue for its members and associated organizations (both nonprofit and for-profit), and has a goal of maximizing the numbers of vulnerable people – especially children –enrolled in various human medical experiments, under the guise of routine, "medically necessary treatment."

9. As part of their standard operating procedure, members of WPATH, including Defendants Rosenthal, Ehresnsaft, and Lee (collectively the "WPATH Defendants") knowingly make false and misleading claims about the purported necessity, safety and efficacy of "gender affirming care" on children. As defined below, this standard set of false and misleading claims is herein referred to as the PLAYBOOK.

10. The WPATH Defendants recite from the PLAYBOOK, i.e. make these deceptive claims in public, and in their private consultations with their potential lucrative patients to turn them into unwitting experimental subjects.

11. Utilizing standard deception from the PLAYBOOK, the WPATH Defendants succeeded in persuading both the minor child S.H. and his mother (Defendant Underhill) that "gender affirming care" was necessary, safe and effective treatment for the child's alleged case of "gender dysphoria." In reliance on the truth of the contentions of the WPATH

defendants, to her detriment, Underhill gave consent for the Supprelin® Implant surgery, after previously consenting to other forms of puberty suppression without informing Hudacko at any time in violation of his fundamental rights.

12. At all relevant times as alleged herein, the WPATH Defendants knew that suppressing puberty in children has never been proven effective for treating the psychological condition of gender dysphoria. WPATH Defendants also knew that suppressing puberty in males is known to stunt growth, prevent the skeleton and bone density from developing normally because testosterone is needed to increase bone density during adolescence, leading to a greatly increased risk of osteoporosis.

13. WPATH Defendants also knew that suppressing puberty is known to inhibit brain development during critical windows of opportunity. Suppressing puberty is known (or at minimum is strongly suspected) to have permanent, irreversible negative effects on mental function, including IQ and executive function.

14. WPATH Defendants executed the PLAYBOOK, and deliberately concealed the lack of any high-quality evidence showing gender affirming care to be even remotely effective, and concealed a litany of known and strongly suspected negative consequences.

15. WPATH Defendants deliberately concealed the fact that, like so many others, Hudacko's son was unwittingly enrolled in the EXPERIMENT, i.e. the ongoing human medical experimentation, funded by

the NIH, that purportedly seeks to learn what the long-term effects of gender-affirming care actually are.

16. Had Underhill known that "gender-affirming care" was not safe and not effective, had life altering damaging effects, or had she known that the TRUE WPATH MISSION includes enrolling unwitting experimental subjects under the false pretense that gender affirming care is necessary, safe and effective "treatment," she likely would not have consented.

17. Defendant Asaf Orr is a lawyer who advises the WPATH DEFENDANTS, and advances the TRUE WPATH MISSION by teaching (along with the former judge in the Hudacko FAMILY LAW CASE Joni Hiramoto) the talking points from the PLAYBOOK to minor's counsels across California if not the United States, including but not limited to Defendant Daniel Harkins, S.H's minor's counsel in the family law case.

18. Defendants formulated, concealed and executed a plan to perform gender identity related surgery on the minor child S.H. without the necessary and legally required informed consent.

19. Plaintiff has commenced this action because Defendants are liable for violating Hudacko's civil rights, and/or alternatively, for Fraud by Concealment, and/or Infliction of Emotional Distress.

PARTIES

A. Plaintiff

20. Plaintiff Edward Allyn Hudacko ("Hudacko") is the father of the minor child S.H., and former husband to Defendant Christine Underhill f/k/a Christine Hudacko, who at all times opposed any form

of "gender affirming care" on his son, including but not limited to, any form of puberty blockers or opposite sex hormones as well as any attempts to "transition" the minor child from being a boy into being a girl.

B. Defendants

21. **Defendant Stephen Rosenthal, MD** - ("ROSENTHAL") is a state-sponsored licensed medical doctor who specializes in endocrinology who is employed by the University of California at San Francisco ("UCSF"), is a co-director of a Child and Adolescent Gender Center, a Past President of the Pediatric Endocrine Society, a principal investigator in various NIH-funded human medical experiments involving gender affirming care on minors, and a member of WPATH who acted under color of law to advance the TRUE WPATH AGENDA employing the PLAYBOOK in support of the conspiracy and SCHEME with the other Defendants to persuade the minor child's mother to unwittingly consent to GENDER AFFIRMING CARE, thus subjecting the child to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION, with a reckless disregard for the constitutional rights and emotional distress of Plaintiff, the child's father.

22. **Defendant Janet Yi Man Lee, MD** - ("LEE") is a state-sponsored licensed medical doctor specializing in pediatric endocrinology who is employed by UCSF, a surgeon and a member of WPATH, who acting under color of law, helped advance and employ the TRUE WPATH AGENDA via its PLAYBOOK in support of the conspiracy and SCHEME to persuade Defendant Underhill to

unwittingly consent to GENDER AFFIRMING CARE, thus subjecting S.H. to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION, with a reckless disregard for the constitutional rights and emotional distress of Plaintiff, the child's father.

23. **Diane Ehrensaft, PhD** – ("EHRENSAFT") a state-sponsored developmental clinical psychologist who is employed by UCSF, and a member of WPATH who acted under color of law to advance the TRUE WPATH AGENDA by employing its PLAYBOOK in support of the conspiracy and SCHEME to persuade S.H.'s mother to unwittingly consent to GENDER AFFIRMING CARE, thus subjecting the child to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION, with a reckless disregard for the constitutional rights and emotional distress of Plaintiff, the child's father.

24. **Defendant Asaf Orr** - ("ORR") is a licensed California attorney, transgender activist and at all relevant times the Legal Director of Child and Adolescent Gender Center, who participated in the coordination of the Supprelin surgery on S.H. without the consent of Plaintiff, who helped advance the TRUE WPATH AGENDA by teaching minor's counsels – including but not limited to Defendant Daniel Harkins – to represent "transgender kids" in such fashion as to execute the PLAYBOOK, striving to maximize the enrollment of minors into medical experimentation that is gender affirming care.

25. **Defendant Nathaniel Bigger - (**"BIGGER") is a licensed California attorney and at all relevant times the attorney representing Underhill

in the FAMILY LAW CASE, who, acting as *de facto* agent of WPATH DEFENDANTS and in conformity with the TRUE WPATH MISSION, participated in a conspiracy with the other Defendants and a SCHEME by accepting money in exchange for advising Underhill according to the PLAYBOOK, coordinating the Supprelin surgery on S.H. without the consent of Plaintiff, rather than advising his client according to the law, the constitution, or the NO SURGERY INJUCTION. Defendant Bigger participated in the conspiracy with the other defendants to, help deceive Underhill into the believing that GENDER AFFIRMING CARE is safe and effective for her son; by falsely telling Underhill that unconsented to gender identity related surgery on a minor was legal; by concealing the fact that Underhill was being tricked consenting to the Minor Child's participation in INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION; and by concealing the SCHEME from Hudacko.

26. **Defendant Daniel Harkins** - ("HARKINS") is a California attorney and at all relevant times the court-appointed attorney representing Minor Child in the FAMILY LAW CASE, who, acting as *de facto* agent of WPATH DEFENDANTS and in conformity with the TRUE WPATH MISSION, participated in the SCHEME by accepting money in exchange for advising Minor Child according to the PLAYBOOK, coordinating the Supprelin surgery on S.H. without the consent of Plaintiff, rather than acting according to the law as an officer of the court, thus helping to deceive Defendant Underhill and S.H. into believing that GENDER AFFIRMING CARE is safe and

effective; and by concealing the fact that Underhill was being tricked into consenting to the Minor Child's participation in INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION; and by concealing the SCHEME from Hudacko.

27. **Defendant Christine Underhill** ("UNDERHILL") is the mother of S.H. and Hudacko's ex-wife and, at all times favors attempts to do the impossible -namely "transition" S.H. from being a boy into being a girl, falsely believing that such a thing was possible, and falsely believing that GENDER AFFIRMING CARE is safe & effective, and agreed to and coordinated with the other Defendants to allow the Supprelin surgery on S.H. without the consent of Plaintiff.

28. **DOE DEFENDANTS** – are presently unknown individuals and/or entities who may also have participated in the SCHEME to coordinating the Supprelin surgery on S.H. without the consent of Plaintiff, to advance the TRUE WPATH MISSION.

II. JURISDICTION

29. Original federal subject matter jurisdiction is conferred on this Court by 28 U.S.C. §1343(3) and 1343(4), which provide for original jurisdiction in this Court of all suits brought pursuant to 42 U.S.C. §1983. Jurisdiction is also conferred by 28 U.S.C. §1331(a) because claims for relief derive from the United States Constitution and the laws of the United States. Jurisdiction of this Court over any claim for Declaratory Relief is conferred by 28 U.S.C. §2201.

30. This federal court should assert Supplemental Jurisdiction over the state law claims,

as they arise from the same nucleus of operative facts giving rise to the federal civil rights claims.

III. VENUE

31. Venue properly lies in the Northern District of California, in that the events and circumstances herein alleged occurred in the greater San Francisco Bay area.

IV. FACTS

32. "GENDER AFFIRMING CARE" – refers collectively to the use of social transitioning, and/or puberty blocking hormones, and/or opposite sex hormones, and/or genital surgeries.

33. "THE EXPERIMENT" – refers to the ongoing effort by the scientific and medical community to learn the long-term physical and mental effects of SOCIAL TRANSITIONING, PUBERTY BLOCKERS, OPPOSITE-SEX HORMONES, VAGINOPLASTY and other surgeries on minor children. As with most forms of human medical experimentation, voluntary participation for "gender affirming care" would be low-to-non-existent absent the PLAYBOOK and the TRUE WPATH MISSION.

34. "TRUE WPATH MISSION" as used herein means (1) maximizing the number of people seeking GENDER AFFIRMING CARE so as to maximize the amount of money received by WPATH members and associated for-profit and nonprofit entities; (2) maximizing the number of human subjects – especially children – unwittingly enrolled into experimental protocols under the guise of medically necessary treatment; and (3) creating a population of

young people who chronologically reach the age of majority and are thus legally able to consent to intoxication and sex, but who physically, mentally and emotionally remain child-like.

35. "PLAYBOOK" as used herein refers to a set of dishonest and/or misleading contentions and/or misrepresentations of fact, regarding the purported safety and efficacy of employing GENDER-AFFIRMING CARE on children, which contentions and representations have been crafted by and are now routinely disseminated by the members of WPATH for the purpose of advancing the TRUE WPATH MISSION. The PLAYBOOK includes, but is not limited to, the false representation of fact that puberty blockers are a "pause button" on pubertal development, fully reversible, and that GENDER AFFIRMING CARE is safe and proven effective at treating the psychological distress of gender dysphoria.

36. "WPATH DEFENDANTS" – refers collectively to Stephen Rosenthal, MD; Diane Ehrensaft, PhD; and Janet Lee, MD.

37. "FAMILY LAW CASE" – refers to Contra Costa Superior Court case no. MSD19-05641, Christine Marie Hudacko v. Edward Allyn Hudacko.

38. "NO SURGERY INJUNCTION" – refers to the August 26, 2020 Court Order stating:

> **[The minor child] will not be permitted to undergo <u>any</u> gender identity related surgery** until they are 18 years of age, absent a written agreement by both parties, Christine

> Hudacko and Edward Hudacko, or an order of the court.

[Exh. "A", p. 7, emphasis added]

39. "SCHEME" – refers to the plan executed by Janet Yi Man Lee, MD; Diane Ehrensaft, PhD; Stephen Rosenthal, MD; Asaf Orr; Nathaniel Bigger; Daniel Harkins And Christine Underhill (each of whom knew about the NO SURGERY INJUNCTION) under which gender identity related surgery was performed on the minor child without Hudacko's consent, and which plan included an agreement to conceal the plan from Hudacko until after it was too late. The deception perpetrated in the SCHEME was consistent with the PLAYBOOK, while the SCHEME itself was a successful event according to the TRUE WPATH MISSION.

40. "INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION" is any medical study or protocol which violates Health and Safety Code §24170 et seq and the Nuremberg code, § 1, which states in pertinent part:

> The voluntary consent of the human subject is absolutely essential. This means that the person involved should have legal capacity to give consent; should be situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion, and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and

> enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

WPATH and the TRUE WPATH MISSION

41. The World Professional Association for Transgender Health ("WPATH") is an organization that purports to be dedicated promoting evidence-based care, education, and research in transgender health.

42. WPATH periodically publishes "Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People." The most recent version of these "Standards of Care" is version 8, published in 2022 ("SOC-8"). Physicians and mental health providers across the globe rely on SOC-8 for guidance in prescribing puberty blockers, opposite-sex hormones, and various types of surgeries in the treatment of the psychological condition "gender dysphoria."

43. In or about January 2024, newly released files from WPATH's internal messaging forum, as well as a leaked internal panel discussion, demonstrate that WPATH is neither scientific nor advocating for ethical medical care. These internal communications

reveal that WPATH advocates for many arbitrary medical practices, including hormonal and surgical experimentation on minors and vulnerable adults.

44. Working hand-in-hand advancing the interests of major hospitals and pharmaceutical companies, WPATH's approach to medicine is consumer-driven and pseudoscientific, and its members appear to be engaged in political activism and commercial promotions, not science.

45. The TRUE WPATH MISSION is at least three-fold: First, by overstating the alleged risks of "untreated" gender dysphoria or gender related distress, and maximizing the profit of gender clinics by maximizing the number of people – especially children and adolescents – who seek "gender affirming care." Second, by falsely proclaiming psychological benefits and fraudulently concealing the known and suspected physical and mental harms caused by these procedures, maximize the number of subjects unwittingly enrolled into experimental protocols purportedly studying their long-term effects. Third, to create a population of young adults who are chronologically over 18 (thus legally able to consent to sex), but who physically, mentally and emotionally remain child-like.

46. Defendants ROSENTHAL, LEE, and EHRENSAFT are each members of WPATH.

47. ROSENTHAL is co-founder and medical director of the multidisciplinary UCSF Child and Adolescent Gender Center (CAGC), where he cares for young transgender patients. Rosenthal has seen close to 2,000 transgender young people with gender

dysphoria, with an average of 15-20 new patients per month, ranging in age from 3 to 25 years old.

48. Rosenthal is an elected member of the Board of Directors of WPATH, and served on the committee responsible for SOC-8.

49. According to a sworn declaration he filed in a federal lawsuit, Rosenthal admits that he is actively serving as a "Principal Investigator" or "Co-Investigator" on "numerous" NIH-funded medical experiments regarding the physical and mental health effects of so-called "gender-affirming care" upon children.

50. One such ongoing human medical experiment is called "The Impact of Early Medical Treatment in Transgender Youth," operating with a total NIH grant award of $5,732,531.

51. The WPATH DEFENDANTS know that children do not understand the effects of hormone therapy, opposite sex hormones, or medical mutilation surgeries.

52. Rosenthal deliberately conceals from his experimental subjects that are minors the fact that they are being subjected to medical procedures that are experimental and banned in some other countries. Instead, Rosenthal misleads these children (and their parents) by reciting from the PLAYBOOK such things as the claim that GENDER AFFIRMING CARE is the "standard of care," clearly suggesting that these procedures are safe & effective under the standards of evidence-based medicine, when (a) there is no high-quality evidence that the procedures are effective at treating the psychological condition of "gender

dysphoria, and (b) these procedures are highly dangerous to children to the point of being physically and mentally disabling.

53. Rosenthal also recites from the PLAYBOOK the notion that the effects of puberty blockers are reversible. Rosenthal states in his sworn declaration that if puberty blockers are discontinued "the patient's endogenous puberty will resume." [Exh. "Q", ¶ 38]

54. During puberty there are critical windows of opportunity for brain development as humans mature from child-like thinking and decision making to adult thinking and decision making. It is simply false to suggest that puberty will "resume." Expert testimony and scientific evidence shows that suspending puberty is likely to halt brain development sufficient to permanently lower IQ and executive function.

55. The use of puberty blockers in children diminishes bone density, leading to medically-induced osteoporosis.

56. The use a puberty blockers also greatly increases the likelihood of proceeding to the next step of GENDER AFFIRMING CARE, as opposed to returning to a healthy mental belief system that matches their actual biology, – namely opposite sex hormones. In males, opposite-sex hormones can lead to decreased muscle mass and strength, decreased sexual desire, inability to achieve orgasm, decreased sperm production, voice changes, decreased testicular volume, erectile dysfunction, infertility, deep vein blood clots, stroke, coronary artery disease, and cerebrovascular disease. Compared to males not treated with opposite sex hormones, males on

opposite-sex hormones are times more likely to get breast cancer, twice as likely to have a stroke, 16 times as likely to have deep vein clots. As compared to women, males are two times more likely to have a heart attack.

57. WPATH DEFENDANTS at all times relevant herein knew about these medically proven facts and deliberately conceal these facts from the public, and from their patients, the experimental subjects, and from Plaintiff.

58. In or about January 2024, Plaintiff obtained a recording of a Continuing Legal Education ("CLE") seminar titled "Gender and Transgender Issues" featuring Asaf Orr and Superior Court judge Joni Hiramoto. The seminar was presented to a group of minor's counsel attorneys. Among others, in attendance was Daniel Harkins, court-appointed attorney for Minor Child. In fact, Daniel Harkins was mentioned in the seminar recording.

59. The CLE seminar was clearly intended to advance the TRUE WPATH MISSION with numerous points taken directly from the PLAYBOOK and push the ideas on licensed California attorneys.

60. For example, Asaf Orr stated:

> "[Puberty blockers are] just a pause button so that if you remove the medication, puberty comes back as it was. There's no effect to fertility, no effect to anything."

61. Asaf Orr also stated:

> "Puberty blockers are fully reversible. 100% reversible."

62. As with the WPATH DEFENDANTS, Asaf Orr knew at all relevant times that puberty blockers are not fully reversible, that they can affect fertility, and they have other detrimental effects as well.

63. Joni Hiramoto, acting in a personal, non-judicial capacity, advanced the TRUE WPATH MISSION by stating:

> "[These points from the PLAYBOOK are] what you have to tell your judge. What was important to me [as judge in the Hudacko case] was that … and you'll see that in that minor's report that Dan Harkins did [in Hudacko's case], he went in and systematically debunked all of the studies that I was given by the parent in opposition [i.e. Hudacko]. And the thing is, if you need help doing that, **you need to talk to Asaf**.

64. Judge Hiramoto explained how best to be deceptive:

> "You [Minor's counsel] may want to, say okay, this is a pro-transition approach, but I think it's better and a little bit more sophisticated to say this is the parent who should be given the decisions in this area because this is the parent who supports the approach that I think is in the child's best interests."

65. Both Asaf Orr and Judge Hiramoto make derogatory reference to the "parent in opposition." The clear premise and assumption of the CLE talk is that

GENDER AFFIRMING CARE is appropriate and always in the child's best interest.

66. The point of the seminar is to teach minor's counsels what to say, i.e. the PLAYBOOK, so that the scientific and medical reality of the dangerous nature of GENDER AFFIRMING CARE (i.e. the "studies") are excluded, and so that the "parent in opposition" always loses.

67. Toward the goals of the TRUE WPATH MISSION, Judge Hiramoto asked:

> "Do [parents'] behaviors [i.e. disagreeing with "GENDER AFFIRMING CARE"], the things they say, the things they do rise to the level of abuse?"

68. Clearly Judge Hiramoto and Defendant Orr aimed to imply that severe punishments are available against parents – such as Hudacko – who dare to oppose the TRUE WPATH MISSION.

69. Based on this new information, Plaintiff is informed and believes that Joni Hiramoto is part of the conspiracy to profit by INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION on children.

70. Based on this new information, Plaintiff is informed and believes that a discriminatory custom or usage against the parent designated "in Opposition" [to GENDER AFFIRMING CARE] exists in the local jurisdiction where the discrimination against him took place, and in the State, generally. .*Adickes v. S.H. Kress & Co.* 398 U.S. 144 (1970) ("*Adickes*")

A. The No Surgery Injunction

71. Hudacko and Underhill were embroiled in a high-conflict Family Law case. The point of contention was that Underhill believed that their son – then a minor – suffered from the psychological condition of "gender dysphoria," and wanted to him to medically "transition" their son S.H.'s male appearance to that of a female's appearance.

72. An August 2020 Court Order awarded Hudacko's ex-wife, Defendant Christine Underhill legal custody (thus medical decision-making authority) over the minor child, thus stripping Hudacko of most of his fundamental constitutional parental rights. However, the Court Order contained an explicit exception to Underhill's medical authority, in the form of an injunction, hereafter termed the NO SURGERY INJUNCTION, which states:

> **[The minor child] will not be permitted to undergo any gender identity related surgery** until they are 18 years of age, absent a written agreement by both parties, Christine [Underhill] and Edward Hudacko, or an order of the court.

[Exh. "A", p. 7, emphasis added]

73. Each Defendant knew about the NO SURGERY INJUNCTION, thus knew that any such surgery was prohibited, absent Hudacko's written consent.

74. Defendant Underhill, the boy's mother, was at all times in favor of GENDER-AFFIRMING CARE for him, believing it was medically necessary.

75. Believing that the treatments for "gender dysphoria" remain largely experimental, Hudacko was opposed to transgender for the minor child.

76. The Family Court's August 26, 2020 custody Order contains two provisions speaking to the issue of gender identity related medical procedures – Section 7a and Section 7b. First, at Section 7a, the Order states:

> [Minor Child] shall be permitted to pursue the services provided by UCSF as to the Minor Child's gender identity, and **shall be permitted to commence hormone therapy**, if recommended by UCSF.

77. The important exception to Underhill's legal custody over the Minor Child is found immediately thereafter, at Section 7b, where the Order issues the NO SURGERY INJUNCTION:

> **[Minor Child] will not be permitted to undergo <u>any</u> gender identity related surgery** until they are 18 years of age, absent a written agreement by both parties, Christine Hudacko and Edward Hudacko, or an order of the court.

[Exh. "A", p. 7, emphasis added]

78. The Court's NO SURGERY INJUNCTION did not define gender identity surgery nor did it define hormone therapy.

79. "Surgery" is statutorily-defined in California as "any act in which human tissue is cut, altered, or otherwise infiltrated by any means." Bus. & Prof. Code § 3041. A Supprelin Implant is "subcutaneous," meaning "administered under the skin." See Merriam-Webster Dictionary, "subcutaneous". Skin is human tissue. Since the implant is administered under the skin, it follows that Supprelin Implant involves cutting or infiltrating human tissue.

80. Supprelin Implant® is a registered trademark of Endo Pharmaceuticals Inc. Endo's published Prescribing Information explicitly states that Supprelin Implant "is a surgical procedure" See Exh. "J"; involves the use of a "surgical tool" ; and requires "making the incision" using the "sterile scalpel".

81. UCSF billed and was paid $209,820.34 for the Supprelin Implant surgery done on S.H.. Supprelin Implant was categorized as "SURGERY" on the Claim Detail for the surgery billing.

B. The Scheme to Perform Gender Identity Related Surgery as Part of the TRUE WPATH MISSION

82. At all relevant times, including at the time of drafting the original complaint here in October 2023, Hudacko thought that UCSF's policies were operative. Only in January 2024 with the publication of the WPATH FILES did Hudacko discover the facts of regarding what is herein termed the TRUE WPATH MISSION.

83. Not knowing the TRUE WPATH MISSION was operative, on 9/29/2020 Hudacko emailed

Underhill, informing her that UCSF's policy is to include both parents in meetings regarding gender identity related medical procedures. Later that day, Underhill replied, informing Hudacko that:

> UCSF has the court order [including the NO SURGERY INJUNCTION] per their request.

[Exh. "B", p. 7]

84. On 10/21/2020, consistent with his right to timely be informed about his Minor Child's medical treatment, Hudacko wrote a letter to REGENTS, Defendants Rosenthal, Ehrensaft, Bigger, and Harkins, copying Underhill's counsel, requesting access to "MyChart," i.e. the Minor Child's online medical records at UCSF. That request was ignored. [Exh. "O", pp. 79-83]

85. The 10/21/2020 letter also informed and alerting REGENTS, Defendants Rosenthal, Ehrensaft, Bigger, and Harkins that the custody agreement over the Minor Child from "Judge Hiramoto extended Christine's legal custody … while continuing to limit decisions over surgical treatment." [Id.]

86. The 10/21/2020 letter also made it clear that Hudacko was against gender interventions on his son, questioning Rosenthal's NIH-funded study, raising the question as to whether his son is participating in the NIH-funded study, and if so, queried whether that was beyond the judge's order because his son was involved in an experiment as to medical treatment. [Id.]

87. Hudacko directly expressed his worry and opposition to alerting REGENTS, Defendants Rosenthal, Ehrensaft, Bigger, and Harkins placing his son on puberty blockers (gonadotropin releasing hormone agonists (GnRHa), pointing out studies that demonstrate "the lack of consensus among professionals … of … *optimal* dosing regimes" as well as potentially cognitive risks to his son. [Id.]

88. The clear indication from the 10/21/2020 letter to REGENTS, Defendants Rosenthal, Ehrensaft, Bigger, and Harkins is that Hudacko did not and would never have given consent to his son being placed on puberty blockers, and with the NO SURGERY INJUNCTION was empowered to prevent the surgical insertion of Supprelin but for the conspiracy to surgically insert Supprelin into S.H. behind his back.

89. Even if Underhill had not provided REGENTS, Defendants Rosenthal, Ehrensaft, Bigger, and Harkins the NO SURGERY INJUNCTION, the Defendants were on notice of the court's order.

90. Upon information and belief, REGENTS maintained that 10/21/2020 letter was received and Defendant Lee had access to it.

91. On 2/17/2021, unbeknownst to Hudacko, Underhill took 16-year-old Minor Child for a patient visit at UCSF Child and Adolescent Gender Center. UCSF doctors discussed with Minor Child a category of experimental drugs called "Puberty Blockers" that "help temporarily suspend or block the physical changes of puberty." [Exh. "E", p. 19]

92. Four different types of puberty blockers (Gonadatropin Releasing Hormone Agonists) were discussed at the 2/17/2021 visit. The first three options were nonsurgical. Two of these are injections (leuprolide acetate and triptorelin); a third is an oral tablet called spironolactone. However, the fourth option - a "subcutaneous histrelin implant" - required surgery. [*Id*]

93. On 2/17/2021, unbeknownst to Hudacko, UCSF sent a letter to Underhill, following up with that day's visit by [Minor Child] Hudacko (AKA: [Girl Name])." The subject of this letter was "PUBERTAL BLOCKERS," and its purpose was to inform Underhill about the purported risks and benefits of puberty blocking hormones. Of note are UCSF's warnings that the "side effects and safety of puberty blockers are not completely understood," that there "may be long-term risks that are not yet known," and that this "is not approved by the Food and Drug Administration for this specific use." [Exh. "E", pp. 18-21]

94. However, the warnings in the 2/17/2021 letter are vague and deceptive, especially when the patient / subject and his mother have been told, by people in white coats, that PUBERTY BLOCKERS are the "standard of care." "Standard of care" strongly implies "safe & effective." This deception is according to the PLAYBOOK and was employed by all Defendants in the 2/17/21 visit.

95. On 2/23/21, Underhill caused the Minor Child to deposit sperm into a sperm bank. [Exh. "K", p. 67] This clearly implies that Defendants knew that

GENDER-AFFIRMING CARE will, in all likelihood, sterilize S.H. for life.

96. It is not possible that S.H. gave informed consent to his sterilization, because children don't yet understand what they are sacrificing. They, including S.H., did not understand how they may come to want biological children of their own one day, nor do they even understand how adoption works or how arduous it can be to conceive a baby via in vitro fertilization. S.H. surely did not understand the other ramifications because they were not even discussed by Defendants with Underhill and S.H.

97. In documents leaked as part of the January 2024 WPATH FILES, it has now become publicly known that WPATH members are well-aware of the impossibility of a child giving informed consent to sterilization. The WPATH DEFENDANTS, who are WPATH members, at all relevant times knew of this impossibility.

98. On information and belief, in reliance on the PLAYBOOK, Underhill gave consent for the WPATH DEFENDANTS to sterilize her son. However, she had no right to unilaterally do that in violation of Family Code section §6925(b)(1). Only a competent adult can consent to their own sterilization.

99. On 6/8/2021, Rosenthal issued "Progress Notes" regarding Minor Child's medical procedures to that point in time which evince conversations between Underhill, Harkins, Bigger with the WPATH Defendants to agree to conceal Supprelin surgery on S.H. from Hudacko, stating in relevant part:

> Mother and [Minor Child] have separate attorneys who are navigating complex family situation [related to the fact that] father is not supportive of [Minor Child's] gender care.

[Exh. "G", p. 28]

100. It is true that Hudacko did not support sterilizing his son, nor subjecting him to procedures that have never been shown to be effective at treating the psychological condition of "gender dysphoria," but which have instead been shown to have dire consequences on both body and mind.

101. UCSF's 6/8/2021 progress notes state that that Underhill has "medical [legal] custody." Despite the fact that REGENTS, Rosenthal, Ehrensaft and Orr were given and aware of the NO SURGERY INJUNCTION COURT ORDER and 10/21/2020 letter from Hudacko informing them that Hudacko needed to grant consent for surgeries. Without mentioning Hudacko, UCSF's 6/8/2021 progress notes continues:

> "Mother is working with her attorney, **[S.H.]**'s attorney and Asaf Orr, JD—everyone [except Hudacko] is working together to achieve resolution [of the Minor Child's having been born male] in the near future.

[Exh. "G", p. 29]

102. UCSF's 6/8/2021 statement further indicates that:

> [Underhill] will keep J. Cohen, LCSW [but not Hudacko] informed of situation.

[Exh. "G", p. 29]

103. The 6/8/2021 statement acknowledged two issues with the proposed surgical procedure: "resolution of insurance issues" because "father is not supportive of [Minor Child's] gender care." [Id.]

104. On 8/4/2021, unbeknownst to Hudacko, after agreeing to do so and conceal the intent to do so, Defendants did cause S.H. to undergo the Supprelin Implant procedure, categorized as "SURGERY." [Exh. "D", p. 16]

105. UCSF billed and was paid $209,820.34 for the Supprelin Implant surgery. [Exh. "L", p. 71].

106. As employees of UCSF, Rosenthal, Ehrensaft, Lee and Orr financially benefitted from the Supprelin surgery.

107. Defendants Bigger and Harkins also financially benefited from the Supprelin for their billed time in "resolving" the issue to circumvent Hudacko's consent.

108. Underhill, UCSF, Rosenthal, Ehrensaft, Bigger and Harkins in a "meeting of the minds" all worked in concert with a singular goal – namely to have the Supprelin implant surgery occur, be covered by insurance, and be hidden from Hudacko.

109. On 10/8/2021 and again on 10/15/2021, Hudacko and Underhill each attended a football game for their younger son. Twice Hudacko politely asked Underhill about the Minor Child, and twice Underhill refused to discuss the matter, later characterizing

inquiry about the Minor Child as "harassing" her. [Exh. "C" p. 14]

110. On 10/18/2021, Underhill emailed Hudacko, revealing the Supprelin Implant, yet clearly wishing to discourage Hudacko from inquiring further, stating, in relevant part:

> **[Minor Child] has begun** hormone therapy - **testosterone blocker (Supprelin) via an implant** and estrogen via pills (Estradiol).

…

> I don't expect that you will pay for half given your **disapproval of transitioning**.
>
> **[Minor Child] started HRT in Aug.** [2021] **and I waited to tell you** to be able to report how it is going so far. **I also waited because frankly I am concerned how you will react** and potentially act out to our children and me. Friday night's incident of you **harassing me [by enquiring about the Minor Child]**, with [younger son] witnessing some of it, confirms my concerns and that [younger son] will have to resume therapy with Adam when football concludes.

[Exh. "C", p. 14, bolding added]

111. WPATH DEFENDANTS are state actors as in addition to being members of WPATH, each is employed by UCSF, undisputedly a California "public

trust" under the California Constitution. [Cal. Const. Art. 9, sect. 9(a)].

112. Defendants Asaf Orr, Christine Underhill, Nathaniel Bigger, and Daniel Harkins (collectively, "NOMINALLY PRIVATE ACTORS") are each *de facto* State Actors. The U.S. Supreme Court established precedent under which private actors will be held as *de facto* state actors, such that a § 1983 claim will lie against them. *Adickes v. S.H. Kress & Co.* 398 U.S. 144 (1970) ("*Adickes*"), and see also *Smith v. Brookshire Bros.*, 519 F.2d 93 (5th Cir. 1975); *Barrett v. Harwood*, 189 F.3d 297, 304 (2d Cir. 1999). A nominally private actor becomes *a de* facto state actor when "the state has so far insinuated itself into a position of interdependence with the [defendant] that it was a joint participant in the enterprise." *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1267 (11th Cir. 2003) ("Focus"), citing *Willis v. Univ. Health Servs.*, 993 F.2d 837 (11th Cir. 1993), quoting *National Broad. Co., Inc. ("NBC") v. Communications Workers of Am., AFL-CIO*, 860 F.2d 1022, 1026-27 (11th Cir. 1988)) (other citations omitted). A court will examine whether the government and the acting party are "intertwined in a symbiotic relationship," as well as whether the relationship involves "the specific conduct of which plaintiff complains." *Id.*

113. Where a state actor and private citizen have a "meeting of the minds" for similar purposes, a private citizen can become a de facto state actor in which a 42 U.S.C 1983 claim may lie. *Cox v. Mariposa Cnty.,* 2022 U.S. Dist. LEXIS 165502, *12 [Harris accused Cox of rape, the Mariposa Conty District

Attorney's Office had possession of Harris' text messages that would exonerate Cox, did not preserve those messages, and returned the phone to Harris giving her the opportunity to destroy the evidence, which she did. Harris was a de facto state actor].

114. The WPATH DEFENDANTS and the NOMINALLY PRIVATE ACTORS are intertwined in a symbiotic relationship as they agreed to do so, then proceeded in concert with each other to overcome the hurdle of the NO SURGERY INJUNCTION and Hudacko's opposition to gender-related surgical procedures by implanting Supprelin into a minor that could not consent to such a surgery. Their relationship involves the specific conduct of which Plaintiff complains, i.e. the SCHEME and the TRUE WPATH MISSION as defined above.

115. The U.S. Supreme Court has found that under the "joint action" test a private party can be fairly said to be a state actor where a private party is a "willful participant in joint action with the State or its agents." *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 923, 102 S. Ct. 2744, 2746 (1982) ("*Lugar*").

116. Where "the State has exercised coercive power or has provided such significant encouragement that the choice must in law be deemed to be that of the State" a private party may be designated a state actor. (*Davison v. Facebook, Inc.*, 370 F. Supp. 3d 6212, 628 (E.D. Va. 2019)(Citations omitted, and internal quotation marks and alteration omitted).

117. The involvement of Orr to provide legal advice to REGENTS, Bigger, Underhill, and Harkins, which he along with REGENTS demonstrates

knowledge that Judge Hiramoto's order affected, or could affect the consent needed for the surgical Supprelin implant. Orr states in his Motion to Dismiss that he was an unpaid volunteer and gave "his legal opinion to UCSF that hormone suppressor treatment did not constitute a violation of the custody order." Dkt. No. 32-1, at 2, 4.

118. Upon information and belief, Orr also conferred with Bigger, Harkins and Underhill, using his position of authority, to conspire with them to "evade" REGENT's clear constitutional duty to obtain Hudacko's consent in advance of his son's surgical Supprelin implant.

119. Upon information and belief, Orr and the REGENTS encouraged Bigger, Underhill and Harkins that Underhill's consent was the only authority needed despite the prohibition of surgical procedures in the NO SURGERY ORDER.

120. Harkins is a state actor, or in the alternative, a *de facto* state actor.

121. Harkins was assigned by the family court to act as "minor's counsel" pursuant to Family Code §3151. Neither Hudacko or Underhill made such a request. As a result of Harkins' assignment by the California state judiciary, Harkins' actions are those of the State of California.

122. In the alternative, Harkins is a *de facto* state actor: (a) Harkins was aware of the NO SURGERY INJUNCTION; (b) Harkins was aware of Hudacko's opposition to puberty blockers as well as surgical procedures, at the latest on 10/21/2020; (c) Harkins was intimately involved in the joint effort of

REGENTS, Orr, Rosenthal, Ehrensaft, Underhill and Bigger to solve the insurance problem and consent issue. [See Exh."G"]; (d) Harkins excluded Hudacko from the discussion and failed to alert Hudacko of the decision unilaterally being made among the Defendants; (e) Harkins had an email exchange with Underhill on May 11, 2021 and call with "counsel." Upon information and belief, that "counsel" either was Orr or Bigger, as Hudacko did not have counsel on or about May 13, 2021. [See Exh. "F"] Upon information and belief, the "conference call" included Harkins, and Orr and Bigger and included a discussion and agreement to engage in the SCHEME.

123. Both the WPATH DEFENDANTS and the NOMINALLY PRIVATE ACTORS are all willful participants in the plan to commit INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION by performing gender identity related surgery on a minor without Hudacko's consent, and thus in violation of Hudacko's fundamental constitutional rights.

124. WPATH DEFENDANTS and NOMINALLY PRIVATE ACTORS are all willful participants in the plan to deceive Underhill into believing that GENDER AFFIRMING CARE is safe and effective so that she would consent on behalf of Minor Child.

125. Furthermore, WPATH DEFENDANTS and NOMINALLY PRIVATE ACTORS are all willful participants in the plan to conceal from Underhill and from the public at large the experimental nature of GENDER AFFIRMING CARE in general, and of the Supprelin Implant surgery in particular.

126. WPATH DEFENDANTS and NOMINALLY PRIVATE ACTORS are all willful participants in the plan to conceal from Hudacko their intentions to perform the Supprelin Implant, with each of them knowing that it would violate Hudacko's fundamental constitutional rights, as those rights were reiterated in the NO SURGERY INJUNCTION.

127. WPATH DEFENDANTS and NOMINALLY PRIVATE ACTORS' concerted conduct in formulating, concealing and executing the SCHEME and in advancing the TRUE WPATH MISSION worked to the mutual benefit of WPATH DEFENDANTS and the NOMINALLY PRIVATE ACTORS. The SCHEME was successful, as WPATH DEFENDANTS were paid a total of at least $209,820.34. [EXHIBIT "L", p. 71]; and Rosenthal obtained another subject for the EXPERIMENT, thus advancing the goals of the TRUE WPATH MISSION. Plaintiff is informed and believes, and on that basis alleges, that discovery will show that some part of that $209,820.34 ended up in the hands of each of the WPATH DEFENDANTS and each of the NOMINALLY PRIVATE ACTORS.

128. Under the "symbiotic relationship" test a private party can be fairly said to be a state actor where "the state has so far insinuated itself into a position of interdependence" with a private party that "it must be recognized as a joint participant in the challenged activity." *Burton v. Wilmington Parking Auth.,* 365 U.S. 715, 725, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961).

129. WPATH DEFENDANTS insinuated themselves into a position of interdependence with the

NOMINALLY PRIVATE ACTORS, as each got what they wanted by formulating, concealing and executing the SCHEME. The WPATH DEFENDANTS get well paid and realize their professionals' financial goals by performing GENDER AFFIRMING CARE under the rubric of the gender clinic on unwitting minors, while also continuing to justify the receipt of millions of dollars in NIH funding to continue the EXPERIMENT. The NOMINALLY PRIVATE ACTORS realize their professional goals by receiving a paycheck for "legal services" rendered ostensibly for representing UCSF (Orr), Underhill (Bigger) and Minor Child (Harkins), but in reality representing and advancing the interests of the TRUE WPATH MISSION.

130. Therefore, there is sufficient nexus between THE WPATH DEFENDANTS and NOMINALLY PRIVATE ACTORS so as to find a "joint action" for purposes of 42 U.S.C. § 1983.

FIRST CAUSE OF ACTION

42 U.S.C. § 1983

Deprivation of Fundamental Right to Direct a Minor Child's Medical Care Without Due Process and Conspiracy to Same

(As to Stephen Rosenthal, MD; Janet Yi Man Lee, MD; Diane Ehrensaft, PhD; Asaf Orr as *de facto* state actor; Christine Underhill as a *de facto* state actor, and Daniel Harkins as *de facto* state actor)

131. Plaintiff repeats and incorporates by reference the facts alleged above.

132. The Fourteenth Amendment provides, in relevant part, that:

> No State…shall…deprive any person of … liberty … without due process of law.

[U.S. Constitution, Amend. XIV]

133. As the Supreme Court has repeatedly observed, the "'liberty' specially protected by the Due Process Clause includes the right[] … to direct the … upbringing of one's children." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). That right is deeply embedded in "[t]he history and culture of Western civilization." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

134. Upheld in "a long line of cases," *Glucksberg*, 521 U.S. at 720, the rights to custody and the upbringing of one's children are deemed "essential" and "far more precious … than property rights," *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). See also *Troxel v. Granville*, 530 U.S. 57, 65 (2000) ("*Troxel*") ("The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court."); *Michael H. v. Gerald D.*, 491 U.S. 110, 123 (1989) (noting "the historic respect—indeed, sanctity would not be too strong a term—traditionally accorded to the relationships that develop within the unitary family"); *Santosky*, 455 U.S. at 753 (The Due Process Clause protects parents' "fundamental liberty interest … in the care, custody, and management of [their] child[ren]."); *Wallis*, 202 F.3d at 1136 ("Parents and children have a well-elaborated constitutional right to

live together without governmental interference," a "liberty interest protected by the Fourteenth Amendment[.]").

135. Regarding the Fourteenth Amendment, and in the context of the fundamental right to parent, U.S. Supreme Court instructs:

> The court has long recognized that the amendment's Due Process Clause, like its U.S. Const. amend. V counterpart, guarantees more than fair process. The Clause also includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests.

[*Troxel, supra*, 530 U.S. 57 at 60]

136. *Troxel* unambiguously finds the right to parent to be a *fundamental* constitutional right.

137. What is more, that constitutional parental right includes the right to "make … judgments" about a minor child's medical care. *Parham v. J.R.*, 442 U.S. 584, 603 (1979). That's because "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment." *Id*. And "[s]imply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state." *Id*.

138. After proceedings in the FAMILY LAW CASE, the Family Court stripped Hudacko of *almost* every aspect of his fundamental right to influence the upbringing of the Minor Child. The remaining aspect of Hudacko's 14th Amendment parental rights was his explicit right to prohibit gender identity related surgery on the Minor Child while the Minor Child was still a minor.

139. Plaintiff hereby specifically identifies his fundamental constitutional right to make judgments about S.H.'s medical care, influence the upbringing, and care for his son S.H., specifically in the form of the right to prohibit gender identity related surgery, the deprivation of which is at issue here, and subject to a strict scrutiny level of review. *See United States v. Hancock*, 231 F.3d 557, 565 (9th Cir. 2000) (observing that laws burdening a fundamental right are subject to strict scrutiny).

140. Under strict scrutiny, the government's challenged actions are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

141. The WPATH DEFENDANTS are undisputedly state actors. As discussed above, Defendants Orr, Harkins and Bigger (NOMINALLY PRIVATE ACTORS) are *de facto* state actors under the Joint Action test. (together both are "Collective State Actors")

142. These collective state actors cannot satisfy strict scrutiny because there was no compelling state

interest in deceiving the public and deceiving Underhill to falsely believe that GENDER AFFIRMING CARE is necessary, safe & effective.

143. There was no compelling state interest for concealing the fact that no good evidence exists for the claim that GENDER AFFIRMING GARE is effective at treating gender dysphoria.

144. There was no compelling state interest for concealing the fact that GENDER AFFIRMING CARE greatly increases the risk of all sorts of physical and mental harm.

145. The Collective State Actors, the Defendants, each of them, as alleged in the foregoing paragraphs incorporated herein by this reference, acted in concert by meeting with each other, without Plaintiff, via telephone, email and/or in person, discussing, then coming to a meeting of the minds to and, in fact, effecting the Supprelin surgery on Plaintiff's minor son, without Plaintiff's knowledge or consent. They achieved their goal – namely to engage the minor in human experimentation for money. There was no compelling state interest for violating Plaintiff's constitutional right to make judgments about S.H.'s medical care, his upbringing, and care namely to prohibit any gender identity related surgery especially considering that Plaintiff's right right was reiterated in the NO SURGERY INJUCTION Court Order.

146. Defendants each knew that the points in the PLAYBOOK are false, and intended to accomplish the GOALS of the TRUE WPATH MISSION.

147. Defendants each knew that Minor Child was being subjected to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION.

148. Defendants each knew that about the NO SURGERY INJUNCTION.

149. The consent to GENDER AFFIRMING CARE (including but not limited to consent to Supprelin Implant surgery) that the WPATH DEFENDANTS appeared to obtain from Underhill was no consent at all, because it was fundamentally based on false and fraudulent pretenses - i.e. the PLAYBOOK.

150. Defendants each acted under color of law and violated Hudacko's fundamental constitutional right to direct the medical care of his son by accepting money in exchange for advancing the interests of the TRUE WPATH MISSION by performing gender identity related surgery on a minor without obtaining necessary consent.

151. Defendants each acted under color of law when they agreed to and committed the overt act of violated Hudacko's fundamental constitutional rights when they accepted money in exchange for subjecting the Minor Child to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION in the form of the Supprelin surgery, while concealing that fact from the public, from Underhill, and from Hudacko.

152. Therefore, Defendants are individually liable for violation of Hudacko's fundamental parental rights. Since Defendants acted together in a common plan, which plan is herein termed the SCHEME, and which SCHEME is a part of the TRUE WPATH

MISSION, Defendants are liable in a conspiracy to violate Hudacko's fundamental parental rights.

SECOND CAUSE OF ACTION

Fraud by Concealment

(Edward Allyn Hudacko v. Stephen Rosenthal, MD; Diane Ehrensaft, PhD; Janet Yi Man Lee, MD; and Asaf Orr)

153. Plaintiff repeats and incorporates by reference the facts alleged above.

154. All parties to this action were aware of and bound by the NO SURGERY INJUNCTION, which injunction reiterates that Hudacko has a right to prohibit any gender related surgery on Minor Child.

155. The WPATH DEFENDANTS are bound by a duty to refrain from committing INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION and to follow the FAMILY LAW Court Order - NO SURGERY INJUCTION.

156. As an officer of the Court, Asaf Orr knew that violation of a Court Order is illegal and violation of the Health and Safety Code sections 24170 et seq is illegal and had a duty to follow both the law and the Court order. The WPATH defendants, as medical providers, knew or should have known the same and had a duty to disclose the true dangers of gender affirming care to both parents of S.H. as well as follow the law and court orders.

157. Underhill owed Plaintiff a fiduciary duty and the duty of good faith and fair dealing as a former spouse and co-parent.

158. Defendants, each of them, intentionally failed to disclose the SCHEME to Hudacko, failed to disclose their economic and research interests, failed to follow the law and a court rder, and by doing so breached their duty to Plaintiff. *Moore v. Regents of University of California*, 51 Cal. 3d 120, 130

159. That is, Defendants concealed their plan under which gender identity related surgery was to be performed on the minor child without Hudacko's consent at all, and without proper informed consent from Underhill. The plan included an agreement to conceal the plan from Hudacko until after it was too late. Importantly, the plan included an agreement to conceal – from both Hudacko and Underhill – the fact that Minor Child was participating in a human medical experiment in violation of the law.

160. Defendants actively prevented Hudacko from discovering the SCHEME by ignoring Hudacko's requests – both formal and informal – for information about medical procedures planned by them on S.H. at UCSF.

161. Defendants actively prevented both Hudacko and Underhill from discovering the INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION by failing to disclose that Rosenthal obtains federal funding for experimenting on transgender children, failing to disclose the false and fraudulent nature of statements regarding the WPATH "standard of care" and that proffering that GENDER AFFIRMING CARE is purportedly safe and effective when they knew it is not, and failing to disclose the many life altering

known risks of GENDER AFFIRMING CARE, which are many and profound.

162. Hudacko did not know that Defendants were planning to perform gender related surgery on the minor child until October 18, 2021, months after surgery was actually performed.

163. Neither Hudacko nor Underhill knew that GENDER AFFIRMING CARE is experimental or dangerous to children.

164. Defendants and each of them knew perfectly well that Hudacko did not and would not approve of gender identity related surgery on the minor child. Defendants and each of them knew perfectly well that neither Hudacko nor Underhill did would approve of subjecting Minor Child to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION. For this reason, Defendants, collectively and individually, intended to deceive Hudacko and the public at large and thereby breached their duty to disclose.

165. Had the SCHEME been disclosed prior to the gender identity related surgery being performed, Hudacko reasonably would have behaved differently. Among other possible actions, Hudacko could and would have brought the SCHEME to the attention of the Family Court, seeking an emergency protective order placing all Defendants on notice that severe consequences - sufficient to stop the SCHEME - would result from any violation of the NO SURGERY INJUNCTION.

166. Defendants' concerted actions in performing the gender identity related surgery in the face of the NO SURGERY INJUNCTION, and in the face of the

Health and Safety Code, the Nuremberg Code, and in concealing the SCHEME from Hudacko, and in concealing the EXPERIMENT from Underhill (as a pretext to obtain consent) were undertaken knowingly, intentionally, willfully and with oppression, fraud and/or malice under the meaning of California Civil Code § 3294.

167. Hudacko was harmed emotionally, as he suffers severe anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame, knowing that his son, whom he loves with all of this heart, has been sterilized, and fearing all of the possible negative lifelong detrimental effects, as discussed throughout.

168. Hudacko - an ordinary, reasonable person - is unable to cope with his emotional distress. It negatively affects his work life and his personal life on a daily basis.

169. Hudacko was harmed financially as he has expended, and will continue to expend money for treatment of his emotional distress and for attorney's fees to prosecute this action.

170. But for the concealment, Hudacko would have been able to stop the gender identity related surgery from going forward, thereby avoiding his injuries. If Underhill had been apprised of the dishonesty at play, it is plausible that Hudacko would have been able to talk sense into her. At minimum, Defendants' concealment was a substantial factor in causing Hudacko's injuries.

171. Therefore, Defendants are liable for Fraud by Concealment, and a civil conspiracy to commit Fraud by Concealment.

THIRD CAUSE OF ACTION

Negligence

Infliction of Emotional Distress

(Edward Allyn Hudacko v. Stephen Rosenthal, MD, Diane Ehrensaft, PhD, Janet Yi Man Lee, MD; Asaf Orr; and Christine Underhill)

172. Plaintiff repeats and incorporates by reference the facts alleged above.

173. Defendants were each aware of the fact that Hudacko, like any good parent, would be traumatized upon learning that his child had been subjected to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION. Thus, Defendants and each of them owed Hudacko an affirmative duty to refrain from participating in the SCHEME and to refrain from advancing the WPATH TRUE MISSION.

174. Defendants, as medical professionals, members of WPATH had a duty to disclose their economic interests and research involving experimentation on children. *Moore v. Regents of University of California*, 51 Cal. 3d 120, 130

175. Defendant Underhill as former spouse to Plaintiff and co-parent owed a fiduciary duty and duty of good faith and fair dealing.

176. Defendants further owed Hudacko an affirmative duty to refrain from plotting and planning to willfully violate the NO SURGERY INJUNCTION.

177. Defendants further owed Hudacko an affirmative duty to refrain from concealing the SCHEME from Hudacko.

178. Defendants and each of them breached their duty to Hudacko subjecting Minor Child to INVOLUNTARY HUMAN MEDICAL EXPERIMENTATION.

179. As a direct and proximate result of Defendants' breach of duty, Hudacko was harmed emotionally, as he suffers severe anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame.

180. Hudacko - an ordinary, reasonable person - is unable to cope with his emotional distress. It negatively affects his work life and his personal life on a daily basis.

181. Hudacko was harmed financially as he has expended, and will continue to expend money for treatment of his emotional distress.

182. Defendants Negligence was a substantial factor in causing Hudacko's emotional distress.

183. Therefore, Defendants are jointly and severally liable for Negligent Infliction of Emotional Distress.

V. PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief as follows:

184. **General Damages** – for pain and suffering in an amount found reasonable, but not less than $1,000,000;

185. **Actual Damages** – for Plaintiff's medical and other expenses actually and proximately caused by Defendants' conduct, in an amount to be proven at trial, but not less than $200,000;

186. **Punitive Damages** – for intentional torts, to the extent Defendants' conduct is found to constitute fraud, malice or oppression under Cal. Civ. Code § 3294, to punish Defendants, make examples of them, and to deter future such conduct, in an amount sufficient to accomplish the purpose of punitive damages, in light of the net worth of Defendants, such amounts to be proven at trial;

187. **Declaratory Judgment**s – as stated above;

188. **Costs and Fees** – as incurred in prosecuting this action, including reasonable attorney fees as allowed by contract or by statute;

189. **Any Other Relief** – the Court may deem appropriate.

VI. DEMAND FOR JURY TRIAL

190. Plaintiff hereby demands a trial by jury on all issues so-triable.

Respectfully submitted on August 30, 2024,

/s/

Tracy L. Henderson, Esq.
Attorney for Edward Allyn Hudacko

CERTIFICATE OF SERVICE

I hereby certify that on this August 30, 2024 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF filing and transmittal Notice of Electronic Filing to all CM/EDF registrants for this case.

Dated: August 30, 2024

By: /s/ *Tracy L. Henderson, Esq.*
P.O. Box 221562
Carmel, CA 93922
tlhlaw@protonmail.com

D14-05641 12-16-2020 9am

PRE-TRIAL ORDER FOR LONG CAUSE [ZOOM] TRIALS IN DEPARTMENT 32

MY TRIAL DATE: 12-16-2020

Before the long-cause trial of any issue, the parties are ordered to comply with the following requirements. Failure to comply may result in sanctions being imposed.

30 days before the date set for trial:

30 DAYS BEFORE: 11-16-2020

Discovery: Discovery must be completed 30 days before trial, except that any expert witness may be deposed as late as 10 days before trial.

Expert Witnesses: Unless demanded earlier pursuant to CCP §2034.230, disclose in writing any expert witnesses (including non-retained, percipient witnesses such as a treating physician). The written disclosure shall include a time estimate for direct examination, a summary of the testimony, a summary of the expert's qualifications and a copy of the expert's report, if one has been prepared.

14 days before the date set for trial:

14 DAYS BEFORE: 12-2-2020

Serve and file a list of all non-expert witnesses, by name, date of birth if known, a time estimate for direct examination, and relevance to trial.

7 days before the date set for trial:

7 DAYS BEFORE: 12-9-2020

DEC OF DISC's WAIVED? ___ YES X NO

I & E's WAIVED? ___ YES X NO

[1] Declarations of Disclosure: Unless the requirement is mutual waived, or not required by Family Code § 2106, serve declaration of disclosure on the other party.

[2] Income & Expense Declaration: Each side must serve on the other party and file with the Court, unless the parties mutually waive this requirement.

[3] Exhibits: **Exhibits are to be pre-marked with exhibit stickers. Serve pre-marked exhibits on the other party.** Exhibit stickers must include:
[a] Numbers for Petitioner (1,2,3), Letters for Respondent (A,B,C), and
[b] The case number on each sticker.
[c] ANY DOCUMENT LONGER THAN 10 PAGES MUST HAVE ALL PAGES NUMBERED [BATE STAMPED]
[d] Any audio/video recording must be accompanied by a proposed transcript of what is said on the recording. Don't forget to mark the transcript as an exhibit.

[4] Trial briefs: Serve on the other party and file with the Court

Stipulations: Before trial, the parties shall meet and confer and attempt to stipulate to facts, accuracy of transcripts, and admissibility of evidence.

BOTH SIDES AGREE TO EMAIL FOR SERVICE? ___ YES ___ NO ___ 7 days or < only X FOR ALL TRIAL DOCS

Manner of Service: Any document served on another party 7 days or less before trial must be served by hand delivery, or, if the receiving party has agreed, by email or fax.

Day of trial:

[1] Submit an Exhibit List identifying the pre-marked exhibits (with two columns, labeled "Identified" and Admitted") to the Courtroom Clerk.

[2] Original Exhibits: Place the **original** exhibits in a binder with a copy of the Exhibit List and hand it to the Bailiff when the case is called on the day of trial. **IF TRIAL IS TO BE VIA ZOOM, PLEASE SUBMIT THE EXHIBITS TO THE COURT CLERK 5 COURT DAYS IN ADVANCE OF TRIAL**

IF TRIAL VIA ZOOM 7 DAYS BEFORE: 12-9-2020

[3] Copies: Please supply 3 copies of the exhibits (one each for yourself, opposing counsel AND third copy for use by witnesses). Each party should bring his or her own copy of the opposing party's exhibits as received from the opposing party. IF TRIAL WILL BE IN PERSON PLEASE BRING EXHIBITS ON DAY OF TRIAL.

Version 6/1/2020

FL-340

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
PREPARED BY THE COURT TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA STREET ADDRESS: 751 PINE STREET MAILING ADDRESS: CITY AND ZIP CODE: MARTINEZ, CA 94553 BRANCH NAME: PETITIONER/PLAINTIFF: CHRISTINE HUDACKO RESPONDENT/DEFENDANT: EDWARD HUDACKO OTHER PARTY:	FILED AUG 26 2020 SUPERIOR COURT OF CALIFORNIA COUNTY OF CONTRA COSTA By _____ Deputy Clerk
FINDINGS AND ORDER AFTER HEARING	CASE NUMBER: D19-05641

1. This proceeding was heard
   on *(date)*: AUGUST 26, 2020 at *(time)*: ~~8:30 A.M.~~ 10:00 A.M in Dept.: 32 Room: ZOOM
   by Judge *(name)*: JONI HIRAMOTO ☐ Temporary Judge
   On the order to show cause, notice of motion or request for order filed *(date)*: 1/10/2020 by *(name)*: CHRISTINE HUDACKO
   a. ☑ Petitioner/plaintiff present ☑ Attorney present *(name)*: NATHANIEL BIGGER
   b. ☒ Respondent/defendant present ☐ Attorney present *(name)*: H. NATHAN JAMES
   c. ☐ Other party present MINOR'S COUNSEL ☒ Attorney present *(name)*: DANIEL S. HARKINS
   ALL APPEARANCES WERE BY ZOOM; PROCEEDINGS WERE TRANSCRIBED.

THE COURT ORDERS HEARING VIA ZOOM AUTHORIZED BY EMERGENCY LOCAL RULES.

2. Custody and visitation/parenting time:	As attached	☐	on form FL-341	☒	Other	☐	Not applicable
3. Child support:	As attached	☐	on form FL-342	☐	Other	☑	Not applicable
4. Spousal or family support:	As attached	☐	on form FL-343	☐	Other	☑	Not applicable
5. Property orders:	As attached	☐	on form FL-344	☑	Other	☐	Not applicable
6. Attorney's fees	As attached	☐	on form FL-346	☐	Other	☒	Not applicable
7. Other orders:	☒ As attached			☐ Not applicable			

8. All other issues are reserved until further order of court.

9. ☒ This matter is continued for further hearing on *(date)*: 12/16/2020 at *(time)*: ~~8:30~~ 9:30 ~~10:00~~ AM in Dept.: 32 / ZOOM
   on the following issues: LONG CAUSE HEARING ON RESERVED ISSUES
   USE THE SAME PERSONAL MEETING ID 633 639 9336 & PASSWORD 2qyWb4
   FOR ALL ZOOM HEARINGS IN DEPT. 32 UNLESS NOTIFIED OTHERWISE

Date: AUGUST 26, 2020

Approved as conforming to court order.

JUDICIAL OFFICER
JONI HIRAMOTO

SIGNATURE OF ATTORNEY FOR ☐ PETITIONER/PLAINTIFF ☐ RESPONDENT/DEFENDANT ☐ OTHER PARTY

Form Adopted for Mandatory Use
Judicial Council of California
FL-340 [Rev. January 1, 2012]

FINDINGS AND ORDER AFTER HEARING
(Family Law—Custody and Support—Uniform Parentage)

www.courts.ca.gov

Court Order – Attachment to FINDINGS AND ORDER AFTER HEARING
CHRISTINE HUDACKO v EDWARD HUDACKO
AUGUST 26, 2020

This court has jurisdiction to make child custody orders in this case under the Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code§§ 3400-3465).

The responding party was given notice and an opportunity to be heard as provided by the laws of the State of California.

The country of habitual residence of the children is the United States.

If you (a party) violate this order, you may be subject to civil or criminal penalties, or both.

All orders not inconsistent with this order remain in full force and effect.

The parents attended Tier 1 confidential mediation on March 5, 2020 and no agreements were reached. The court reviewed the Tier 2 report of the interviews of the parents, the children and of **[S.H.]**'s therapist dated August 24, 2020.

The court also reviewed the report of Minor's Counsel, Dan Harkins, dated August 14 2020. The court notes that the parties previously stipulated and the court ordered that *Sanchez* objections shall not apply to the report of minor's counsel. The court also reviewed the confidential document submitted by minor's counsel

and ordered that it be sealed and retained in the confidential section of the court's file.

PARENTS: CHRISTINE HUDACKO [MOTHER]
v. EDWARD HUDACKO [FATHER]

CHILDREN: [S.H.]
(DOB [redacted]04) AGE 16

[W.H.]
(DOB [redacted]06) AGE 14

1. **LEGAL CUSTODY of [W.H.]:** the parties agree and the court orders that the parties shall share joint legal custody of **[W.H.]**.

   a. In exercising joint legal custody, the parents shall share in the responsibility, confer in good faith, and agree on matters concerning the health, education, and welfare of **[W.H.]**. The parents must confer and agree in making decisions on the following matters:

      i. Enrollment in or leaving a particular private or public school or daycare center.
      ii. **[W.H.]** participating in particular religious activities or institutions.
      iii. **[W.H.]** beginning or ending psychiatric, psychological, or other mental health counseling or therapy.
      iv. Selecting a doctor, dentist, or other health professional for **[W.H.]** (except in emergency situations).

v. **[W.H.]** participating in organized extracurricular activities.
vi. **[W.H.]** traveling out-of-country.

b. If a party does not obtain the consent of the party to those items in ¶ 1a (see above), which are granted as court orders:

i. He or she may be subject to civil or criminal penalties.
ii. The court may change the legal and physical custody of **[W.H.]**.

c. Health-care notification. Each parent shall notify the other parent of the name, address, and telephone number of each health practitioner who examines or treats **[W.H.]**; such notification must be made within 24 hours of the commencement of the first such treatment or examination.

d. Both parents' written consent or court order is required prior to the administration of any prescribed psychotropic medications for **[W.H.]**. Upon receipt of written consent or court order, both parents shall administer psychotropic medications are prescribed.

e. Both parents are required to administer all prescribed non-psychotropic medications for **[W.H.]**.

f. Except for any current court orders intended to protect the address of either parent who is the protected party of a restraining order, each parent shall have access to all medical and school records pertaining to **[W.H.]** and shall be permitted to consult with any and all professionals involved with the children. Each parent shall be responsible for contacting the school(s) and medical provider(s) to receive information. Both parents shall have the right to supply information to all providers.

g. Each parent is authorized to take any and all actions necessary to protect the health, safety, and welfare of **[W.H.]**, including but not limited to consent to emergency surgical procedures or treatment. The parent authorizing such emergency treatment shall notify the other parent as soon as possible of the emergency situation and of all procedures or treatment administered to **[W.H.]**.

h. School Notification/Emergency Contact Forms. Except for any current court orders intended to protect the address of either parent who is the protected party of a restraining order, each party will be designated be

designated on all of **[W.H.]**'s emergency contact forms as a person to be contacted in the event of an emergency regarding **[W.H.]**.

i. Name. Neither parent shall change the last name of **[W.H.]** or have a different name used on **[W.H.]**'s medical, school, or other records without the written consent of the other parent.

2. **LEGAL CUSTODY OF [S.H.]: Mother** shall be the sole *temporary* legal custodial parent of **[S.H.] and may make decisions on her own for [S.H.]'s health, education and welfare without Father's consent.**

Except for any current court orders intended to protect the address of either parent who is the protected party of a restraining order, **Father** shall have the right to obtain all otherwise confidential information regarding **[S.H.]**'s health, education and welfare. **Father** can exchange information with the **[S.H.]**'s school, childcare provider(s), doctor(s), dentist, coaches, tutors and therapist(s).

Mother must provide Father with a list of **[S.H.]**'s treating medical (including dental and mental health) professionals, coaches, teachers, and tutors, including name and contact information. Dan Harkins, minor's counsel representing **[S.H.]**,

may assist Father in having the providers contact Father.

Mother is not ordered specifically to provide Father with "updates" on a monthly or weekly basis. Mother may provide such information to Father at her discretion. Father may contact **[S.H.]**'s doctors, teachers, etc., for information about **[S.H.]**. Father does not have a "right" to attend medical appointments for **[S.H.]**.

3. **PHYSICAL CUSTODY:**

   A. Father shall not have visitation with **[S.H.]** unless it is in a therapeutic setting with **[S.H.]**'s consent.

   B. Father shall temporarily provide care for **[W.H.]** as follows. Every other week with the exchange at Sunday at 7:00 p.m. Father shall have the week beginning August 30, 2020.

Mother shall provide the **children's** physical care when they are not otherwise court ordered or mutually agreed between the parents to be in ***Father's*** physical care.

4. **Minor's Counsel.** The parties agree and the court orders that Mr. Harkins shall continue to serve as minor's counsel for both children. Costs

of minor's counsel shall be paid for by Father 70% and by Mother 30%.

5. **Reunification Therapy.** The parties agree and the court orders that the court's previous order that the parties participate in Reunification Therapy is rescinded. The parties are not required to participate in Reunification Therapy at this time.

6. **Individual Therapy for the children.**

   The parties shall cooperate to ensure that **[W.H.]** continues to participate in individual therapy with Adam Moss at least twice a month, or with a different frequency, as recommended by the therapist.

   Petitioner shall ensure that **[S.H.]** continues to participate in individual therapy with Lee Townsend at least twice a month, or with a different frequency, as recommended by the therapist.

7. **Services for [S.H.].**
   a. **[S.H.]** shall be permitted to pursue the services provided by UCSF as to **[S.H.]**'s gender identity, and shall be permitted to commence hormone therapy, if recommended by UCSF.
   b. **[S.H.]** will not be permitted to undergo any gender identity related surgery until they are 18 years of age, absent a written agreement by both parties, Christine Hudacko and Edward Hudacko, or an order of the court.
   c. Mother shall ensure that **[S.H.]** receives an annual physical examination by their medical

physician. This has already occurred during the summer of 2020.

d. **[S.H.]** shall not be required to undergo a neuropsychological evaluation, unless recommended by UCSF.

e. **[S.H.]** shall not participate in any assessment by Dr. Craig Childress absent a written agreement by both parties, Christine Hudacko and Edward Hudacko, or a showing of a substantial change of circumstances and an order of the court.

Court Order – Attachment to FINDINGS AND ORDER AFTER HEARING
CHRISTINE HUDACKO v EDWARD HUDACKO
AUGUST 26, 2020

Page 5 OF ATTACHMENT

e. **[S.H.]** shall not participate in any assessment by Dr. Kenneth Zucker absent a written agreement by both parties, Christine Hudacko and Edward Hudacko, or a showing of a substantial change of circumstances and an order of the court.

f. **[S.H.]** shall not participate in any assessment or services offered by Or. Childress, Dr. Devita Singh, Dr. Zucker, Dorcy Pruter or Dr. Warshak absent a written agreement by both parties, Christine Hudacko and Edward Hudacko, or a showing of a substantial change of circumstances and an order of the court.

8. **[S.H.]'s 529 account.** The issue of whether Edward Hudacko shall be ordered to replace, from community funds, the $20,000 he removed from

[S.H.]'s 529 account and used to pay school tuition for both children shall be reserved for long cause trial. The court admonishes the parties that money from the 529 accounts should not be removed without the agreement of both parties or a court order.

9. **Exclusive use and possession of the marital residence at 3030 Clinton Avenue, Richmond.** The parties agree and the court orders that exclusive use and possession of the marital residence shall be temporarily awarded to Respondent. The parties agree and the court orders that Respondent is admonished of his fiduciary duty to maintain the community asset and pay its obligations until otherwise agreed by the parties in writing or further order of the court.

10. Petitioner may retrieve personal belongings from the marital residence with at least 24 hours' notice to the Respondent.

11. The court declines to make an order regarding 2001 Chevy Camaro at this time.

12. Respondent's request to order Petitioner to "obtain full-time employment immediately" is reserved for a long cause trial. Respondent's request to impute Respondent with $200,000 income a year is reserved for a long cause trial. Jurisdiction is reserved to the date of Petitioner's filing.

13. Respondent is admonished that he is not to drop Petitioner nor the children from any insurance coverage or policy. Coverage is to be maintained it was on December 31, 2019.

14. Respondent's request for sanctions shall be reserved for long cause trial.

15. Respondent is admonished to keep minor's counsel *fees* paid in a timely manner.

16. **Holiday schedule for [W.H.].** To be reserved for long cause trial. The court attaches, as a courtesy, a sample template for the parties to consider.

17. The parties shall return to Dept. 32 (via Zoom - use the some Personal Meeting Id,**633 639 9336** and the same password, **2qyWb4)** on December 16, 2020 from 9:30 a.m. to 4:30 p.m. for long cause trial on the issues specified above.

Date: August 26, 2020

/s/
Joni Hiramoto
Judge of the Superior Court,
Dept. 32

Court Order – Attachment to FINDINGS AND ORDER AFTER HEARING
CHRISTINE HUDACKO v EDWARD HUDACKO
AUGUST 26, 2020

Sample Holiday Schedule for [W.H.]
(Not ordered by the court. The parties shall attempt to meet and confer prior to trial.)

HOLIDAY	TIME	EVEN YEARS	ODD YEARS
Easter Sunday	9:00am until 8:00pm	Mother	Father
Mother's Day	9:00am until 8:00pm	Mother	Mother
Father's Day	9:00am until 8:00pm	Father	Father
July 4	9:00am on 7/4 until 9:00am on 7/5	Mother	Father
Thanksgiving	9:00am until 8:00pm	Father	Mother
Winter Break	Winter break shall be split in half each year. Mother shall have the half with Christmas Day in it during even years. Father shall have the half with Christmas Day in it during odd years.		
Child's Birthday	**To be celebrated on each parent's custodial time.**		
Parent's Respective Birthdays	**To be celebrated on each parent's custodial time.**		

EXHIBIT B

RE: [S.H.] update incl. both children's school progress reports

Christine Hudacko <christinehudacko@yahoo.com>
Tue 9/29/2020 1:08 PM
To: Ted Hudacko
<thudacko@rocketsciencesystems.com>

UCSF has the court order per their request. Their policy pertains to joint legal custody.

Sent from Mail for Windows 10

From: Ted Hudacko
Sent: Tuesday, September 29, 2020 9:23 AM
To: Christine Hudacko
Subject: Re: **[S.H.]** update incl. both children's school progress reports

Removing lawyers to reduce costs.

Re: UCSF, Dr. Ehrensaft, the director of mental health, finally returned my call made in July. She and I spoke briefly. She said UCSF policy is inclusion of both parents in meetings. I do not have the relevant zoom information.

From: Christine Hudacko
<christinehudacko@yahoo.com>
Sent: Tuesday, September 29, 2020 9:12 AM
To: Ted Hudacko
Cc: dshark1@pacbell.net; Nathaniel Bigger; Nate James
Subject: [S.H.] update incl. both children's school progress reports

Hi Ted, Attached are both children's progress reports for the first term at St Mary's, in case you didn't yet see. They are both doing really well. St. Mary's remains very rigorous in their learning despite online learning environment, so their achievements are commendable.

RE our move, which you were notified about when I signed the lease earlier in the month, we will be moving into the condo later this week and expect our first night there to be Sat.

RE **[S.H.]**'s health appointments, reminder that **[S.H.]** has an orthodontist check-up Tues., 10/6, and UCSF zoom meeting Tues., 10/13. **[S.H.]** continues to see Lee week on-week off.

Thanks,
Chris

Sent from Mail for Windows 10

Case 3:23-cv-05316-SI Document 90
Filed: 08/30/24

EXHIBIT C

From: Christine Hudacko
christinehudacko@yahoo.com
Subject: update on **[S.H.]**'s health
Date: October 18, 2021 at 7:47 PM
To: Ted Hudacko
thudacko@rocketsciencesystems.com
Cc: Nathaniel Bigger nate_bigger@yahoo.com, Daniel S. Harkins dshark1@pacbell.net

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Ted, **[S.H.]** has begun hormone therapy - testosterone blocker (Supprelin) via an implant and estrogen via pills (Estradiol). **[S.H.]** is doing well and happy to finally begin the process. I believe that **[S.H.]** has been very supported by UCSF and therapists over the past 12 months in determining this was the right step for them. **[S.H.]** continues to see Dr. Barrow to be supported. Insurance has paid for the vast majority of implant procedure and I sent UCSF a check for the balance ($2035.64). I don't expect that you will pay for half given your disapproval of transitioning.

[S.H.] started HRT in Aug. and I waited to tell you to be able to report how it is going so far. I also waited because frankly I am concerned how you will react and potentially act out to our children and me. Friday night's incident of you harassing me, with **[W.H.]** witnessing some of it, confirms my concerns and that **[W.H.]** will have to resume therapy with Adam when football concludes.

-Chris

Sent from Mail for Windows

EXHIBIT D

AA-17005*01*110552-MO-21237-65167-ACUS 425N

UnitedHealthcare

nited HealthCare Services, Inc.
ICHARDSON/SPRGFLD SRVC CNTR
O BOX 30555
ALT LAKE CITY, UT 84130-0555
hone: 1-866-348-1286

August 25, 2021

Have more questions about your claim?
Visit **www.myuhc.com**
for all your claim and benefit information.

Claim Detail for [redacted] [S.H.]

Provider: J LEE **Claim Number:** CW3504121601 **Patient Account Number** [redacted]

Date(s) of Service	Type of Service	Notes*	Amount Billed	Plan Discounts	Amount Allowed	Your Plan Paid	Your Itemized Responsibility to Provider				Amount You Owe**
							Deductible	Copay	Coinsurance	Non-Covered	
08/04/2021	SURGERY	D1	$745.00	$21.21	$723.79	$651.41	$0.00	$0.00	$72.38	$0.00	$72.38
Claim Total:			**$745.00**	**$21.21**	**$723.79**	**$651.41**	**$0.00**	**$0.00**	**$72.38**	**$0.00**	**$72.38**

**This total does not reflect any payments / copays you made at the time of service or purchase. Please wait for a provider bill before making a payment.

lotes*

'lease note that appeal deadlines have been extended until further notice due to COVID-19. You should consult vith your employer and visit the US Department of Labor website at dol.gov for more information and additional iotices about the deadline extensions and how they may apply to you.

)1 - THE PLAN DISCOUNT SHOWN IS YOUR SAVINGS FOR USING A NETWORK PROVIDER. THE AMOUNT YOU OWE MAY INCLUDE YOUR COPAY, :OINSURANCE, DEDUCTIBLE, PLUS ANY AMOUNT DUE IF YOU'VE REACHED YOUR BENEFIT LIMIT ON A COVERED SERVICE.

}ecause your family deductible has been satisfied, your remaining individual deductible has been adjusted to $0. The coinsurance period of your plan has begun for all :overed members of your family.

\ review of this benefit determination may be requested by submitting your appeal to us in writing at the following address: UnitedHealthcare Appeals, P.O. Box 740816, \tlanta, GA 30374-0816. The request for your review must be made within 180 days from the date you receive this statement. If you request a review of your claim lenial, we will complete our review not later than 30 days after we receive your request for review.

: your plan is governed by ERISA, you may have the right to file a civil action under ERISA if all required reviews of your claim have been completed.

'ou or your authorized representative, such as a family member or physician, may appeal the decision by submitting comments, documents or other relevant information ɔ the appeal address referenced above.

'ou may request copies (free of charge) of information relevant to your claim by contacting us at the above address.

EXHIBIT E

Name: **[S.H.]** | DOB: [redacted]2004 |
MRN: [redacted] | PCP: Eileen G. Aicardi, MD

Letter Details **[S.H.]**

UCSF Pediatric Endocrine
1825 4TH ST FL 6
SAN FRANCISCO CA 94158-2515
Phone: 415-353-7337 |
Fax: 415-476-8214

February 17, 2021

Patient: **[S.H.]**
[MRN: [redacted]]
Date of Birth: [redacted]2004
Date of Visit: 2/17/2021

UCSF Benioff Children's Hospital Child and Adolescent Gender Clinic (CAGC)

PUBERTAL BLOCKERS

Parent or Guardian Consent

Before considering a medication for your child to put puberty "on hold", there are several things you need to know. There are possible advantages, disadvantages and risks with pubertal blockers. We have listed them here for you. It's important that you understand all of this information before your child begins the medication.

Please read the following carefully and ask us any questions. We want you to be very comfortable and sure of what pubertal blockers offer your child. We have a simpler version that we ask recommend you and your child read together.

After your questions or concerns are addressed and you have decided to proceed with the pubertal blocker medication for your child, both you will need to sign this information and consent form. You and your child will also need to sign the consent form that you read with your child.

What are the different medications that can help to stop the physical changes of puberty?

The main way that the physical changes of puberty can be put on hold is by blocking the signal from the brain to the organs that make the hormones of puberty. These hormones are estrogen and testosterone. Estrogen is made by the ovaries. Testosterone is made by the testes.

The medications are called Pubertal Blockers or GnRH agonists. Examples include **leuprolide acetate injections (1, 3, 4, 6 month)**, **triptorelin injections (6 months), or histrelin subcutaneous implants (1-2 year).** This medication is effective for both males and females. They can be started just after the early physical changes of puberty, or anytime after puberty has started.

For transgender girls, there are alternative medicines that can block the effect of testosterone. The most common medication of this type is an oral tablet called **spironolactone.** There is a separate consent form for this medication. Spironolactone is

not as effective at blocking puberty in transgender girls, but it is much less expensive.

Every medication has risks, benefits, and side effects that are important to understand before starting. It is also important to know how they work.

Medications for Blocking Puberty

I understand that:

Puberty Blockers are used to help temporarily suspend or block the physical changes of puberty.

Puberty blockers usually suppress puberty after one month of starting the medication.

This medication is not specifically made for the purpose of blocking puberty (they are not FDA approved for this purpose). In transgender youth, pediatric endocrinologists (children's doctors who work with hormones and puberty), recommend these medications if the physical changes of puberty need to be postponed. They have been in use for this purpose for many years.

The medication is not permanent. If my child stops the puberty blocker, my child's body will restart the changes of puberty at the developmental stage they were at when they started the hormone blocker after about 6-12 months.

While taking these medications, my child's body will not be making the hormones of puberty (testosterone or estrogen).

While taking these medicines, my child may be avoiding the unhappiness and trauma of unwanted puberty, giving your child the opportunity to develop

in their affirmed gender, with a better fit between body and mind.

Puberty blockers may avoid the need for surgeries and other treatments (i.e. mastectomies for transmen, tracheal shaving or electrolysis for transwomen) that would be required to try to reverse the effects of puberty.

Taking puberty blockers may also improve safety and integration into society when transgender girls are adults. This is because transgender women who underwent male puberty are often unable to 'pass' as female because of irreversible changes that male puberty causes.

It is recommended that my child and family participate in therapy with a therapist experienced in gender issues while my child is taking the hormone blocker .

Risks of Puberty Blockers

I understand that:

The side effects and safety of puberty blockers are not completely understood. There may be long-term risks that are not yet known.

My child will likely not have a pubertal growth spurt while on pubertal blockers alone. In transgender boys, delaying the onset of puberty may actually make them slightly taller if the growth plates are open.

There may be a delay of typical adolescent cognitive or brain development while on these medicines. This will resume when not taking the blocker.

The normal increase of **bone mineral density** that occurs during puberty is likely to be reduced while on pubertal blockers. Bone mineral density will continue to increase at a prepubertal rate while on puberty blockers. We expect that bone mineral density will be normal compared to peers either when pubertal blockers are discontinued, or when pubertal blockers are combined with cross-sex hormones (estrogen/testosterone). However, the long term effects of puberty blockers that are used alone are not completely understood.

Blocking puberty at an early stage will likely limit the potential for **fertility**. Options for fertility preservation have been discussed with my provider.

Puberty blockers will stop the development of puberty in my child and other people may notice. As my child becomes older, this may become more apparent.

Some transgender people have experienced harassment and discrimination. I can get resources that will support my child and family. I may have to advocate for my child to participate safely and free from harassment in schools and other activities.

I can ask my child's provider and therapist for help advocating for my child.

Prevention of Medical Complications

I understand that:

My child should take puberty blocking medication as prescribed. I will tell my child's health care provider if my child has any problems or side effects or is unhappy with the medication.

My child needs periodic clinic visits to make sure that my child is responding appropriately to the puberty blocker.

Puberty blockers are used off label for blocking puberty in patients with gender dysphoria. I know this means it is not approved by the Food and Drug Administration for this specific use. I know that the medication that is recommended for my child is based on the judgment and experience of our health care provider and is supported by the Society of Pediatric Endocrinology and World Professional Association of Transgender Health (WPATH).

My child can choose to stop taking these medications at any time. If my child decides to do that, I will stop the medications with the help of my health care provider.

My signatures below confirm that:

- My child's health care provider has talked with me about:
    - the benefits and risks of puberty blockers for my child.
    - the possible or likely consequences of using puberty blockers.
    - potential alternative treatments.
- The information in this form includes the known effects and risks. There may be unknown long-term effects or risks.
- I have had enough opportunity to discuss treatment options with my child's health care provider.

- All of my questions have been answered to my satisfaction.
- My child is in agreement with this treatment and the signature of my child on the Child's Puberty Blocker consent form attests to this agreement.
- My signature attests to your consent for your child to begin the Puberty Blocker.

My signature below confirms that:

1. **I understand the potential benefits and risks of puberty blockers (GnRH agonists), the possible or likely consequences of puberty blocker therapy, and potential alternative treatment options.**
2. **I understand that this form covers known effects and risks and that there may be long-term effects or risks that are not yet known.**
3. **I have discussed puberty blockers with my provider, received sufficient information to make a decision, and all my questions are answered.**
4. **I agree to the monitoring plan of care, including regular medical visits with a CAGC provider (every 3-6 months) and blood tests (every 6-12 months), and imaging such as bone density scan or bone age x ray (every 1-2 years). Failure to follow the monitoring plan of care may result in discontinuation of the puberty blocker prescription.**

__ I do want my child to begin receiving GnRH agonist (puberty blocker) medication.

__ I do not wish my child to begin taking puberty blocking medication at this time.

_____ _____

Parent or Guardian signature Date

_____ _____

Parent or Guardian signature Date

_____ _____

Patient signature Date

_____ _____

Prescribing clinician signature Date

[S.H.], 2/17/2021 11:05 AM

This letter was initially viewed by Edward A Hudacko at 11/29/2021 3:22 PM.

Case 3:23-cv-05316-SI Document 90
Filed: 08/30/24

EXHIBIT F

[OMITTED]

Case 3:23-cv-05316-SI Document 90
Filed: 08/30/24

EXHIBIT G

UCSF MyChart - Visit Summary 1/30/22, 8:32 PM

Name: **[S.H.]** | DOB [redacted]2004 | MRN: [redacted] |
PCP: Eileen G. Aicardi, MD

A Note to Patients: Symptoms are concisely summarized to inform treatment recommendations. For reasons of privacy and brevity, this note does not attempt to capture all experiences that were discussed.

Progress Notes

Stephen M Rosenthal at 6/8/2021 4:00 PM

Subjective:

Subjective

Chief Complaint

Patient presents with

- Follow-up

I performed this evaluation using real-time telehealth tools, including a live video Zoom connection between my location and the patient's

location. Prior to initiating, the patient consented to perform this evaluation using telehealth tools.

HPI 16 y.o. 11 m.o. transgender female.

Checklist complete for starting E2 (prefers estrace) and histrelin.

Pt's mother in contact with Asaf Orr. Mother and pt have separate attorneys who are navigating complex family situation; in particular insurance issues, as pt is currently using father's insurance and father is not supportive of pt's gender care. Mother has complete medical custody

Patient's allergies, medications, past medical, surgical, family and social histories were reviewed and updated as appropriate.

Review of Systems

Objective

There were no vitals taken for this visit.

Physical Exam

HENT:

Head: Normocephalic.

Neurological:

Mental Status: He is alert.

Psychiatric:

Mood and Affect: Mood normal.

Lab Review:
not applicable

Assessment:

Assessment
16 y.o. 11 m.o. transgender female.

Checklist complete for transition.

Awaiting resolution of insurance issues and family issues as noted above.

Plan:

Plan

Mother is working with her attorney, **[S.H.]**'s attorney and Asaf Orr, JD--everyone is working together to achieve resolution in near future.

Mother will keep J. Cohen, LCSW, informed of situation.

follow up to be arranged.

I spent a total of 40 minutes on this patient's care on the day of their visit excluding time spent related to any billed procedures. This time includes time spent with the patient as well as time spent documenting in the medical record, reviewing patient's records and tests, obtaining history, placing orders, communicating with other healthcare professionals, counseling the patient, family, or caregiver, and/or care coordination for the diagnoses above.

EXHIBIT H

EYE ON THE NEWS

Child Custody's Gender Gauntlet

Transgender ideology has already achieved a powerful hold on our court system—and parents and children are paying the price.

Abigail Shrier
February 7, 2022

Before she decided to strip him of all custody over his son, Drew*—before determining that he would have no say in whether Drew began medical gender transition—California Superior Court Judge Joni Hiramoto asked Ted Hudacko this: "If your son [Drew] were medically psychotic and believed himself to be the Queen of England, would you love him?"

"Of course I would," the senior software engineer at Apple replied, according to the court transcript. "I'd also try to get him help."

"I understand that qualifier," Judge Hiramoto replied. "But if it were—if you were told by [Drew's] psychiatrist, psychologist that [Drew] was very

fragile and that confronting him—or, I'm sorry, confronting *them* with the idea that they are not the Queen of England is very harmful to their mental health, could you go along and say, 'OK, [Drew], you are the Queen of England and I love you; you are my child and I want you to do great and please continue to see your psychologist.' Could you do that?"

"Yes," Hudacko said. "That sounds like part of a process that might take some time, sure."

"What process?" Judge Hiramoto said. "What is the thing that might take some time? Accepting the idea that [Drew] occupies an identity that you believe is not true?"

"The identity you just mentioned to me was the Queen of England," Ted began. "I can tell him and I can affirm that to him, to reassuring him situationally; but objectively, he is not the Queen of England and that won't change, and even the therapist in that case would know that."

The then-54-year-old father of two teenage minor sons (Drew is the elder) felt that he was walking into a trap. For Ted, precision is not merely a requirement for his job but almost a constitutional necessity. His recall of every fact, date, and filing of the complicated court proceedings involving him and his ex-wife is astoundingly accurate—the sort of feat you might expect from a brilliant lawyer, not a distraught father battling the legal system alone for his son.

But at this point in the child-custody hearings, Ted couldn't understand what the judge wanted from him. His soon-to-be-ex-wife, Christine, then an executive at the investment firm BlackRock, had

already agreed to shared custody of their younger son; no one—not even this judge—seemed to believe that he was anything like an unfit father.

Ted isn't a particularly devout Episcopalian, and he describes his politics as libertarian. He's athletic, health-conscious, and takes a keen interest in his sons' talents. He coached their baseball teams and researched conservatory programs for Drew, already an accomplished pianist. Just one year earlier, Ted had been one-half of a Bay Area power couple with high-status careers and precocious kids. Now, he was one-half of a contentious divorce, presided over by a judge who was referring to Drew as "they" and pressing Ted to accept that his 16-year-old son was actually a girl.

"And do you think that being transgender is a sin?" Judge Hiramoto asked, according to the transcript.

"No, of course I don't think it's a sin."

"So you don't think that it's a sin. But you probably think that [Drew], if they are truly transgender, you would prefer that [Drew] not be transgender because in our society transgender people are the subject of a lot of discrimination. Would you agree with that?"

"I agree that transgender people suffer some discrimination and prejudice. I agree with that," he said.

"I'm sort of going off the parallel experiences that I've read about or heard in family court or in family law classes for judges where gay children come out to their parents," the judge said. "And sometimes it is difficult for the parents because they believe that the

identity of being gay or lesbian, in their religion, is a sin. And then some people don't feel that it's a sin, but they say—they take a different angle, and they say, I just would prefer my child not to be gay or lesbian because they suffer so much discrimination in our society.

"So I'm sort of asking these parallel questions to see what is your—what I see in the papers is that you think that [Drew] is not truly transgender and that they are merely confused and—"

"He might be transgender," Ted said. "He might be."

"Okay. So if [Drew] might be transgender, it's just to say they might."

Ted realized his error and corrected himself: he had used the "he" pronoun because he remained deeply skeptical that the boy he'd coached in little league—the son he'd once seen crushing on a cute girl in his fifth-grade class—was actually a young woman.

"They might be," Ted said. "[Drew]—they might be. Might be. We don't know."

While trying to keep an open mind about Drew's gender, Ted was adamant to the judge that he did not want Drew to begin medical transition. In the 312 days since he had last seen his boy, Ted had done a lot of research on medical transition and gender dysphoria. He begged the court to consider research that suggested puberty blockers could impair cognition and diminish bone density. He knew that Drew, if administered puberty blockers along with estrogen, would be at high risk of permanent infertility. He wasn't even sure that his son had

gender dysphoria. He wanted to see his son—and he wanted this bullet train to slow down.

"It sounds to me that you would prefer that [Drew], when all is said and done, is just going through a phase. Is that a fair assessment?"

Ted evaded the question. Did he prefer that his son avoid a medically risky regimen that would render him permanently infertile and make him a lifetime medical patient? Wouldn't anyone?

In the three years I've spent writing about families with transgender-identifying minors, the story of Ted Hudacko stood out as a case study of how gender ideology has infiltrated family law. It also frames the unintended consequences of medical professionals' fudging science, rewriting medical definitions, and tolerating shoddy research to placate activists. At each stage, doctors may have thought: Where was the harm? And so, as a consequence, judges now decide the fate of children and their families based on phony, medically unsubstantiated metaphysics, as if it were factual that all adolescents have an immutable, ineffable "gender identity," knowable only to the adolescents themselves.

On June 24, 2020, following her discussion with Ted about the Queen of England hypothetical, Judge Joni Hiramoto granted Christine sole legal custody of Drew on a temporary basis and approved the shared legal and physical custody arrangement of their younger son. She assured Ted that her order was not yet permanent. Judge Hiramoto had decided to order the appointment of a minor's counsel to investigate how the boys were faring before making any

permanent decisions. She already had the perfect person in mind. “I actually know of one who was previously appointed by the court, by a different judge, on a case involving children that were allegedly transgender,” she said. That minor’s counsel was attorney Daniel Harkins.

Ted didn’t know it yet, but the appointment of Harkins would place the final nail in the coffin of his parental rights. Within just a few months, the court would definitively end Ted’s parental relationship. He would have no right to see Drew, no right to talk to him, no right to demand that Drew attend therapy with him, and absolutely no right to stop a medical transition already planned by the Child and Adolescent Gender Center of UCSF Benioff Children’s Hospital.

And finally, the court also felt that Ted had no right to know that Judge Hiramoto had a transgender child of her own, whose gender transition she had publicly supported. No one disclosed this information to the parties.

I first spoke to Ted in May 2021, after Judge Hiramoto—following the recommendation of minor’s counsel—had stripped him of all custody of Drew. Ted was leaning heavily on support groups just to get himself through the day. He compared himself to the morose Edward Norton character from the movie *Fight Club*, who attends multiple support groups to relieve his depression and insomnia. “I’m in six support groups,” Ted said, laughing a little at himself.

Ted estimated that he had spent only 75 minutes total with Drew in the previous 12 months. His wounds were raw. Part of him wanted to blast his story across America, but he also worried that he might lose any remaining chance to see his son again if he did so. He had dismissed his attorney, who had failed to restore any of Ted's rights, notwithstanding $25,000 in legal fees. For four months, Ted had been representing himself in court, filing motion after motion, attempting to terminate the appointment of the minor's counsel (denied), pleading the court for more access to his son (also denied). The man I spoke to was distraught, half in shock, like someone arriving home from work to find his house being bulldozed.

The whole notion that Drew might be transgender still seemed bizarre to Ted—a fantasy told about someone else, bearing no connection to him. Even his divorce still seemed more like a nightmare than waking life. Sure, Christine had been distant in their marriage for some time, Ted told me, but that was easy to explain: for more than a year, she had been distracted by tragedy. In 2018, Christine's sister had been stabbed 23 times at her workplace by her own estranged husband, who had recently been discharged from an inpatient mental-health facility. Christine spent the next year shuttling from the Bay Area to upstate New York to aid her sister's recovery and provide evidence to strengthen the district attorney's attempted murder prosecution. For the sentencing phase of the criminal trial—in June and July 2019—Christine stayed on the East Coast with both boys.

Ted was then fully preoccupied with a grueling six-week project for Apple. He hadn't slept well in weeks, he says. On a Saturday in August 2019, shortly after returning from upstate New York with the boys, Christine walked into Ted's home office and announced both that she was leaving and that their son Drew was transgender. By his own admission, Ted became angry. He believed Christine must have talked Drew into this during their weeks together in upstate New York. Ted says he begged to have this conversation after he had gotten some sleep. But Christine walked out, taking the kids to stay with her at a neighbor's house.

"Saturday, when she left, I was under the impression, mistaken impression, that, you know, she simply temporarily left," he said. "You know, maybe going out to get some fresh air or to just get, you know, give us some space or maybe even have gone to see a movie. I just went upstairs. I didn't get up till the following morning."

Court documents reveal Ted's struggles with the court-appointed minor's counsel, Daniel Harkins.

No part of his tragedy is more Kafkaesque.

Harkins met with both boys, interviewed Drew's therapist and both parents, and conducted two 90-minute interviews with Diane Ehrensaft of the UCSF Benioff Child and Adolescent Gender Clinic. Harkins also did some research on Ken Zucker, the Toronto-based psychologist and gender dysphoria specialist whom Ted preferred. Harkins never spoke with Zucker.

Zucker is arguably the world's leading expert on gender dysphoria. He oversaw the writing of the entry of the condition for the DSM-5, the most recent *Diagnostic and Statistical Manual of Mental Disorders*. He also helped write the most recent final "Standards of Care" guidelines for the World Professional Association of Transgender Health. (New final standards are forthcoming.)

Zucker is a practitioner of "watchful waiting," a method of exploratory therapy that considers gender as only one component of what may be causing a child's distress. Watchful waiting, to its proponents, is the more prudent approach to treating gender-dysphoric minors, as it recognizes that over 70 percent of kids with gender dysphoria typically outgrow it. In 2015, Zucker was fired from his clinic following an activist-led campaign to purge Canada of psychologists who opposed immediate "affirmation" and transitioning for kids experiencing gender dysphoria. (The hospital that fired Zucker and shuttered his clinic later publicly apologized to him and paid him nearly $550,000, plus legal fees, for having smeared him and misrepresented his work.) Put simply, Zucker's approach directly contradicts the "affirmative" approach now in vogue, which places gender-dysphoric minors in the driver's seat of their own diagnosis and treatment. Harkins's preferred expert, Diane Ehrensaft, is a leading advocate of the affirmation-only approach, and Harkins appears to have accepted her views as dogma.

By contrast, Harkins dismissed Zucker as a crank. "His views are controversial, and I have been

informed are discredited in the psychological community," Harkins wrote. As for Zucker's approach —an attempt to encourage a child to grow more comfortable in his body by using psychotherapy to explore all his sources of distress—Harkins expressed concern that "his approach is a step away from what is referred to as conversion therapy, if not in fact conversion therapy." That Zucker oversaw the writing of the very clinical definition of "gender dysphoria" that Harkins cites as authoritative in his report, Harkins does not mention.

Ted also supplied the court with an article by journalist Jesse Singal that explained Zucker's work and told the story of the activist mob that claimed Zucker's job. Harkins appears to have been unmoved: "Mr. Singal is clear that he is troubled by transgenders. He refers to Zucker's work frequently in his articles. He has been criticized as trans-phobic. It is difficult to see why a journalist's opinion should be given much weight," Harkins wrote. Instead, Harkins seems to have uncritically adopted the view of a gender-medical provider who has staked her career on the existence of ineffable genders—the incongruence of which with biological sex can only be rectified through a combination of affirmation, hormones, and surgery.

Ted lost his cool during their interview, according to Harkins: "During the interview, with his attorney present, Father became very upset and stated that 5 years from now when [Drew] realizes he is [*sic*] mutilated himself, he will have to be there to pick up the pieces—not minor's counsel."

Ted's outburst might strike many parents as reasonable. Who was this guy, freshly on the scene, to decide whether Ted could ever see his kid again and what pieces of Drew's anatomy should be surgically removed? But Harkins read between the lines and discerned in Ted the wrong view of gender identity—namely, that it might not be immutable: "This is indicative of father's view of [Drew's] gender identity. It also gives us an insight as to his view in general about transgender people. He simply does not see this as a viable alternative. He is very frustrated that he has not been able to express all these ideas directly to [Drew]."

Based on the lengthy minor's counsel report, Harkins gave Ted's parenting a failing grade: "Father has not been accepting of [Drew's] status as transgender. He has been quite clear that he does not accept that [Drew] is in fact transgender."

It's possible that Harkins has never met a father so "wrong" in all his views as Ted Hudacko. "Father has requested that a parental alienation assessment be performed by Dr. Craig Childress. First, it needs to be pointed out that parental alienation is not a proper or accepted term. The appropriate term is alignment. This means the child has aligned themselves with one parent and against the other."

As for Ted's proposal that a psychological expert in "parental alienation" compel Drew at least to talk to his father, Harkins can only tut-tut: "It is unfortunate but it appears that father is willing to use coercion in an attempt to force [Drew] to have a relationship with him instead of trying to accept

[Drew], offer them unconditional love and listen to what he wants."

Even Ted's withdrawal from a 529 education-savings account to pay for Drew's prep school tuition becomes, in Harkins's report, further proof that Ted was "willing to use punitive measures to [*sic*] for [Drew] to communicate with him on his terms." In Harkins's book, Ted could simply not stop failing. "He is also not looking at [Drew] as an independent person." Drew was 16 at the time.

Harkins seems to have been offended by Ted's suspicion that Christine had influenced their son's new identity or turned Drew against him. Harkins wrote in his report: Ted "questioned whether [Drew] wrote communications to him because of the sophistication of the language," according to Harkins's report. "[Drew] confirmed he wrote those communications. He had some help on the grammar but the thoughts are all his." Harkins might have asked: Grammar help from whom? And was it help of a "not 'there' but 'they're' " variety, or more like, "Move over so I can type"?

Either way, Harkins crowned Christine the winner of the parenting contest and Ted the sore, mixed-up loser. "[Drew] is an independent very bright young person. Facing gender identity issues is difficult. I don't think anyone who has not gone through this process can truly understand how difficult it must be the feel [*sic*] that you are on [*sic*] the wrong body and you are willing to go through painful surgery to correct the problem. [Drew]'s mother has given him unconditional love. She reports when she asked

father if he could give [Drew] unconditional love and he stated that he did not know what that was."

Summarizing matters as a gender-ideology-addled King Solomon might have, Harkins wrote: "These parents have a choice, they can either continue to believe that they should be in total control of their child's life or they can come to an understanding that those days are past and they need to work with their children and give their children some independence and the ability to make some of their own decisions." With the help of gender doctors who will profit handsomely from the procedures, of course.

Harkins's judgment was swift and ironclad: mom should retain full legal custody on a permanent basis and provide Ted updates, at her discretion, regarding matters that affect Drew's health, education, and welfare. Drew would commence hormone therapy, as directed by USCF. Judge Hiramoto made all this official. The only right that Ted seems to have retained is the power to prevent Drew from undergoing "any gender identity related surgery" before he turns 18, absent agreement of both parties.

In October 2021, Ted was stunned by a $209,820.34 charge on his insurance statement. When he wrote to Christine, she confirmed that a puberty-blocking implant had been inserted in Drew's arm months earlier and that Drew had begun a course of cross-sex hormones. The combination—if not soon stopped—would likely sterilize Drew. No one had asked Ted's permission for the procedure or even informed Ted of what had been done.

Ted responded to this news with a flurry of e-mails to Christine's attorney. He told Christine's lawyer that the medical procedure was in violation of a court order, and Christine was risking being held in contempt of court. A day later, Christine's lawyer filed a request for a Domestic Violence Restraining Order against Ted, alleging that he had spoken to his ex-wife "menacingly" at their younger son's football games. Ted was served with the temporary restraining order; California law now required him to relinquish all his firearms within 24 hours or potentially face felony charges. He quickly complied.

"It's like being a Rodeo clown or being a professional wrestler," Ted said to me recently, over the phone. "It's like, 'OK, now let's watch Ted get body-slammed. Now watch Joni Hiramoto put him in a headlock.' Now, for my next trick!"

Overwrought and perhaps a touch reckless, Ted joined the Apple Slack channel devoted to "trans kid parenting" and shared his outrage and concern about his son's medical transition and the risks involved. The other members chastised him and reported Ted to "Employee Relations," known everywhere else as "HR." Ted now worries for his job.

As for Judge Hiramoto's potential conflicts of interest, a check of social media reveals the following: On October 1, 2019, on a post of her biologically male child dressed in earrings and makeup, Judge Hiramoto comments: "Proud to be your mom." In May 2020, one month before Ted and Christine Hudacko appeared in court, Judge Hiramoto's son celebrated on Instagram his one-year anniversary coming out as

a transgender female. On July 3, 2020—after Judge Hiramoto had entered her first provisional order granting Christine full custody, her transfeminine son posted on Instagram: "This is my first time wearing a bikini." Judge Hiramoto commented: "Beautiful!!"

On February 7, 2021, in another post of her transfeminine child in eye makeup and nail polish, holding up a sea urchin, Judge Hiramoto commented: "That mussel linguine was absolutely delicious! Thank you my darling daughter!!"

On February 9, 2021: "Love the colors and make up!!" And on February 20, 2021, on a post of her adult biological son made up in makeup, lashes and jewelry, with hashtags "#transisbeauatiful" and "#girlslikeus" and "#transvisibility," Judge Hiramoto writes "Sweet!" followed by clapping hands, heart-eyes, and fire emojis. (Judge Hiramoto posted no comments on the several photos in which her kid appears in bondage gear.)

On her own Facebook page, on June 27, 2015, Judge Hiramoto reposted her picture with the Pride flag transposed over it. And in November 20, 2020, in response to California congressman Mark Takano's post in honor of "Transgender Day of Remembrance," Judge Hiramoto wrote: "Thank you for speaking up for those who face some of the harshest prejudice in our society." (I reached out to Judge Hiramoto, minor's counsel Daniel Harkins, and Christine Hudacko for comment; none of them responded to my e-mails.)

Whether one believes that Hiramoto's social media posts constitute admirable or appropriate parenting is irrelevant to whether any of these created a judicial duty to recuse or a duty to disclose. Without mentioning Judge Hiramoto's name, I consulted two judicial-ethics experts to determine a judge's specific ethical duty under the circumstances. Both experts agreed that while the duty to recuse is hard to establish, the duty to disclose is much broader. "The general rule of thumb with disclosure is that a judge should disclose to the parties anything that the parties would be likely to find relevant to the question of whether or not they should be seeking to recuse the judge," said Richard Flamm, author of the legal treatise *Judicial Disqualification: Recusal and Disqualification of Judges*. I asked him whether, in a custody case in which parents were fighting over whether to transition a minor son, the judge's having a transgender son of her own was something the parties were "likely to find relevant."

"Yeah, I mean, don't you?" Flamm said. "I think most people would think anything is relevant if it's on the same subject matter. So, I gave the example before of a judge who's been an accident victim presiding over a case involving a car accident—should disclose it. A judge who's had a child who was molested, if she's presiding over a case in which one of the parties is accused of molesting somebody's else child, she'd probably disclose that because the parties would find it relevant."

Judge Hiramoto may have had an ethical duty to disclose these facts to the parties. But the more I delved into the case, the more I realized that gender

ideology has already achieved a powerful hold on our court system. It's possible that almost any family court judge, with or without a family conflict of interest, could have reached the same conclusions.

At a February 2017 conference of the United States division of the World Professional Association for Transgender Health (USPATH), an attendant asked two of the gender doctors—University of Southern California pediatrician Johanna Olson-Kennedy and Brown University professor of pediatrics Michelle Forcier—whether there was a way legally to compel parents to medically transition their children. "Even if you get a court order, the most protective factor for a good outcome is parental support. So it's not my first line to go to the court to get [a pediatric patient] what they need. But it is my second line and I will do it."

"There's no precedent" for legally compelling parents, Forcier agreed. "But you can again work with the child protection team for medical neglect. Work with one parent, at least to get things started. And again, you can do some education."

In fact, Forcier added, "We did education with judges in Rhode Island. We spent half a day with family court judges, telling them this is what gender and transgender is."

The efforts of gender activists to educate family law practitioners have borne fruit. In another family court case in Arizona, parents lost custody of their troubled 15-year-old daughter when they refused to agree that she was, in fact, a boy. I spoke to the family lawyer involved in that case, Vernadette

Broyles, who managed to obtain from the judge the court-wide "training" sessions she had received on transgender youth. The list, which I obtained, included four separate presentations by activists during the previous two years, in addition to lunch meetings hosted by the "LGBTQ Court-Involved Youth Committee." There is no indication that any of this judicial "training" included hearing from a single de-transitioner—that is, one of a fast-growing movement of young people who already regret their hasty medical transitions—nor from any of the parents who have watched their teens' lives made worse by a sudden gender swap, nor a single psychologist or psychiatrist who maintains skepticism about quick adolescent medical transition as a remedy.

"The problem is, when it's a court-wide training, even if you file a motion to recuse that particular judge, you have no guarantee that you'll be able to get in front of *any* judge that will give you impartial justice," Broyles said.

Judge Hiramoto referred twice in the transcript to the things she had learned in "judicial college" and "family law classes for judges." One thing she learned, it seems, was to refer to all adolescents whose gender identity is at issue as "they/them"—whether or not the gender identity was in dispute. Another thing Hiramoto learned, according to the transcript, was that gender, like sexual orientation, is immutable. Several times she pressed Ted, in several ways, on whether he could accept Drew if it turned out that Drew was "truly transgender."

This is gender ideology—the belief, not backed by any meaningful empirical evidence, that we all have an ineffable gender identity, knowable only to us. This identity has no observable markers, and it is immutable (until the moment we change our minds and reveal ourselves as "gender fluid," of course). It is promoted by virtually every practitioner of "gender-affirming care," it is unfalsifiable, and its hold on our legal system is gaining ground.

After years of lobbying by gender activists, the International Classification of Diseases (ICD), Tenth Revision, which went into effect in January of this year, eliminated the term "gender dysphoria." This standard international textbook of disease renames the condition "gender incongruence," and reclassifies it under "sexual health." The psychological symptom—"distress"—no longer appears; according to the most authoritative diagnostic text used by doctors the world over, a once-mental condition is now just a physical one. One might forgive courts for assuming, then, that a physical problem must have a physical solution.

Courts are adopting this view and seeing a child who has a feeling of gender dysphoria as no different from one born with a cleft palate. From this perspective, the only relevant question in a custody dispute involving a transgender-identified minor is: When will you allow him to get the necessary surgery to fix his body? Once a court swallows gender ideology, in other words, judges will believe that the only thing left for a loving parent to do, after an adolescent announces a trans identity, is shuttle him to the doctors who will alter his body and contribute

clapping-hands emojis to the photos he posts on Instagram.

As for the doctors and mental-health providers opposing the dogmatic insistences of gender ideology masquerading as science, only a handful are willing to write and fight under their own names: Will Malone, Julia Mason, Patrick Lappert, Paul Hruz, Dr. Paul McHugh, Dr. Stephen B. Levine. And, yes, Ken Zucker. The rest work anonymously, through new organizations that have not yet managed to loosen gender ideology's grip on the courts.

In January 2021, Judge Hiramoto transferred from Family Court of Contra Costa to the Criminal Division. For a year, Judge Wendy Coats presided over the Hudackos' ongoing proceedings. Last Friday, Ted and Christine appeared before their new judge, Benjamin Reyes II. At issue: the temporary restraining order against Ted.

According to several witnesses, Judge Reyes commenced proceedings by stating his pronouns.

**The name has been changed for this article.*

Abigail Shrier is a writer living in Los Angeles and the author of Irreversible Damage: The Transgender Craze Seducing Our Daughters

EXHIBIT I

UCSF MyChart - Visit Summary 1/30/22, 8:11 PM

Name: **[S.H.]** | DOB[redacted]2004 | MRN:[redacted] | PCP: Eileen G. Aicardi, MD

A Note to Patients: Symptoms are concisely summarized to inform treatment recommendations. For reasons of privacy and brevity, this note does not attempt to capture all experiences that were discussed.

Progress Notes

Dominique B at 8/4/2021 3:30 PM

Mom with pt. Pt calm, cooperative, asking appropriate questions. VSS. Tolerated procedure well. Both educated on after care. Verbalized understanding.

PROCEDURE CONSENT: THE FOLLOWING WAS DISCUSSED WITH THE CAREGIVER AND PATIENT:

1. Provider discussed the medication treatment, including the benefits and risks.
2. Procedure summary:
   A. Patient preparation
   B. Local anesthesia
   C. Procedure
   D. Aftercare
3. Potential Risks:
   A. Infection
   B. Allergic reaction

C. Pain
D. Bleeding
E. Extrusion

4. In the case of an accidental provider needle stick: patient consents to STI testing.

Patient Instructions

Janet Yi Lee at 8/4/2021 3:30 PM

Start taking your estrace 2mg/day.

Patient Education:

The histrelin subcutaneous implant was inserted today. Due for removal/replacement by 08/04/2023.
Follow post insertion care instructions below.
Return: schedule follow-up visit in 2 months.
Please repeat the blood work at your preferred lab 1-2 weeks before the followup visit.

1. What is histrelin acetate (Supprelin LA or Vantas implants)?
Supprelin or Vantas are gonadotropin releasing hormone (GnRH) agonists. It suppresses luteinizing hormone and follicle stimulating hormone (LH/FSH) and gonadal sex steroids estrogen and testosterone. As a result, puberty is suppressed. However, puberty will resume if the medication is discontinued.

The implant is 3.5 cm long and 3 mm wide.

2. Transient worsening of symptoms of puberty or onset of new symptoms may occur initially. However, within **4 weeks** of histrelin therapy, complete suppression of gonadal steroids occurs and manifestations of puberty decrease.

3. <u>Post Insertion Care</u>: refrain from getting the inserted arm wet for 24 hours and from strenuous exertion of the inserted arm for 7 days after implant insertion to allow the incision to fully close (avoid lifting > 25 lb or contact sports until healed). The bandage can be removed after 24 hours. You can take a shower at this point, but avoid submersing the site in water (bath or swimming) until healed. Do not remove the surgical strips; rather, the strips should be allowed to fall off on their own after several days. Once the incision has fully healed, you can resume full activities.

Pain Control Post Procedure: apply ice pack for 10 minutes immediately post procedure. You can take over the counter pain medications such as acetaminophen or ibuprofen as needed for pain. Please see your visit summary medication list for dose and frequency of pain medications.

4. Common Adverse Reactions: bruising, soreness, pain, tingling, itching, swelling at the insertion site. They usually go away without treatment by 2 weeks (typically sooner).

5. Uncommon Adverse Reactions: report to your provider any severe pain, bleeding, redness, or swelling in and around the implant site. Rarely, the implant can be expelled from the body through the original incision site. The site should be checked by the provider 1-2 weeks after the insertion. Serious and life-threatening reactions have happened with GnRH medicines, but these are very rare. Call 911 or

go to the nearest emergency room if you have trouble breathing, severe pain, or severe rash.

6. Monitoring GnRH agonist therapy: your provider will monitor LH/FSH/E2/T one month after the implant is placed and every 3-6 months. A DXA scan for bone mineral density will be done yearly if you are not taking estrogen or testosterone. The implant is FDA approved for 12 months of therapy. However, it will last up to two years in many people. Follow up with your provider regarding the appropriate time to remove/replace your implant.

EXHIBIT J

HIGHLIGHTS OF PRESCRIBING INFORMATION
These highlights do not include all the information needed to use SUPPRELIN® LA safely and effectively. See full prescribing information for SUPPRELIN LA.

SUPPRELIN LA (histrelin acetate) subcutaneous implant Initial U.S. Approval: 1991

--------RECENT MAJOR CHANGES--------

Warnings and Precautions (5.5) 04/2022

---------INDICATIONS AND USAGE---------
SUPPRELIN LA is a gonadotropin releasing hormone (GnRH) agonist indicated for the treatment of children with central precocious puberty (CPP) (1).

-----DOSAGE AND ADMINISTRATION-----
The recommended dose of SUPPRELIN LA is one implant every 12 months. The implant is inserted subcutaneously in the inner aspect of the upper arm and provides continuous release of histrelin for 12 months of hormonal therapy (2).

-----DOSAGE FORMS AND STRENGTHS-----
SUPPRELIN LA is available as a 50 mg histrelin acetate subcutaneous implant which delivers

approximately 65 mcg histrelin acetate per day over 12 months (3).

--------CONTRAINDICATIONS---------

- History of hypersensitivity to gonadotropin releasing hormone (GnRH) or GnRH analogs (4).
- Pregnancy (4).

------WARNINGS AND PRECAUTIONS------

- Initial Agnostic Action: Initial transient increases of estradiol and/or testosterone may cause a temporary worsening of symptoms (5.1).
- Implant Breakage: Have been observed during implant removal. Monitor luteinizing hormone, follicle stimulating hormone or testosterone for suppression of CPP (5.2, 5.6)
- Psychiatric Events: Have been reported in patients taking GnRH agonists. Events include emotional lability, such as crying, irritability, impatience, anger, and aggression. Monitor for development or worsening of psychiatric symptoms. (5.3)
- Convulsions: Have been observed in patients receiving GnRH agonists with or without a history of seizures, epilepsy, cerebrovascular disorders, central nervous system anomalies or tumors, and in patients on concomitant medications that have been associated with convulsions. (5.4)
- Pseudotumor Cerebri (Idiopathic Intracranial Hypertension): Have been reported in pediatric patients receiving GnRH agonists. Monitor patients for headache, papilledema, and blurred vision. (5.5)

--------ADVERSE REACTIONS---------

- The most common adverse reaction is implant site reaction (51.1%), including complications related to the insertion or removal of the implant (6).
- Adverse events related to suppression of endogenous sex steroid secretion may occur (6.1).

To report SUSPECTED ADVERSE REACTIONS, contact Endo Pharmaceuticals Solutions Inc. at 1-800-462-3636 or FDA at 1-800-FDA-1088 or *www.fda.govlmedwatch*

-----USE IN SPECIFIC POPULATIONS-----

Use of SUPPRELIN LA in children less than 2 years of age is not recommended (8.4).

See 17 for PATIENT COUNSELING INFORMATION and Medication Guide.

Revised: 04/2022

FULL PRESCRIBING INFORMATION: CONTENTS*

* Sections or subsections omitted from the full prescribing information are not listed

FULL PRESCRIBING INFORMATION

1 INDICATIONS AND USAGE

SUPPRELIN LA (histrelin acetate) subcutaneous implant is indicated for the treatment of children with central precocious puberty (CPP).

Children with CPP (neurogenic or idiopathic) have an early onset of secondary sexual characteristics (earlier than 8 years of age in females and 9 years of age in males). They also show a significantly advanced bone age that can result in diminished adult height attainment.

Prior to initiation of treatment a clinical diagnosis of CPP should be confirmed by measurement of blood concentrations of total sex steroids, luteinizing hormone (LH) and follicle stimulating hormone (FSH) following stimulation with a GnRH analog, and assessment of bone age versus chronological age. Baseline evaluations should include height and weight measurements, diagnostic imaging of the brain (to rule out intracranial tumor), pelvic/testicular/adrenal ultrasound (to rule out steroid secreting tumors), human chorionic gonadotropin levels (to rule out a chorionic gonadotropin secreting tumor), and adrenal steroids to exclude congenital adrenal hyperplasia.

2 DOSAGE AND ADMINISTRATION

2.1 Recommended Dose

The recommended dose of SUPPRELIN LA is one implant every 12 months. Each implant contains 50 mg histrelin acetate. The implant is inserted subcutaneously in the inner aspect of the upper arm and provides continuous release of histrelin acetate

(65 mcg/day) for 12 months of hormonal therapy. SUPPRELIN LA should be removed after 12 months of therapy (the implant has been designed to allow for a few additional weeks of histrelin acetate release, in order to allow flexibility of medical appointments). At the time an implant is removed, another implant may be inserted to continue therapy. Discontinuation of SUPPRELIN LA should be considered at the discretion of the physician and at the appropriate time point for the onset of puberty (approximately 11 years for females and 12 years for males).

2.2 Recommended Procedure for Implant Insertion and Removal

This procedure section is intended to provide guidance for the insertion and removal of SUPPRELIN LA. The actual procedure used, however, is at the discretion of the qualified healthcare provider performing the procedure.

Insertion of a new implant can proceed using the following **Suggested Insertion Procedure**. If a previous SUPPRELIN LA implant must first be removed, please see the **Suggested Removal Procedure** instructions below.

Suggested Insertion Procedure

The supplies necessary to insert the implant, including the Insertion Tool and local anesthetic, are provided in a separate Implantation Kit that is shipped along with the implant. Please note that the implant should be kept refrigerated (2-8°C) in its sealed vial, pouch, and carton, until needed for the procedure. Once removed from refrigeration, the vial containing the implant (still in its unopened pouch

and carton) may remain at room temperature for up to 7 days, if necessary, before being used. If not used in that time, the packaged implant may again be properly refrigerated until the expiration date on the carton.

NOTE: The Implantation Kit is to be stored at room temperature and should *not* be refrigerated.

Insertion of the SUPPRELIN LA implant is a surgical procedure. Sterile gloves and aseptic technique must be used to minimize any chance of infection.

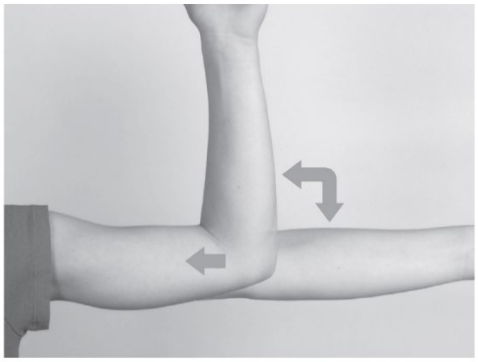
Setting up the Sterile Field

Using proper aseptic technique, the sterilized components of the Implantation Kit needed for the insertion procedure, including the Insertion Tool, are to be carefully dispensed from their packaging onto the Sterile Field drape (*non*-fenestrated) provided. NOTE THAT THE KIT BOX AND ALL PACKAGING ARE NOT STERILE and should be kept off of the Sterile Field drape. DO NOT PLACE THE VIAL OF LOCAL ANESTHETIC OR THE VIAL CONTAINING THE IMPLANT ONTO THE DRAPE as the exterior surface of these vials is not sterile.

The implant vial should not be opened until just before the time of insertion. Open the vial by removing the metal band and carefully pour the sterile contents (implant and sterile saline) onto the Sterile Field drape. The implant can then be handled with sterile gloves or with the sterile mosquito clamp provided. **AVOID bending or pinching the implant.**

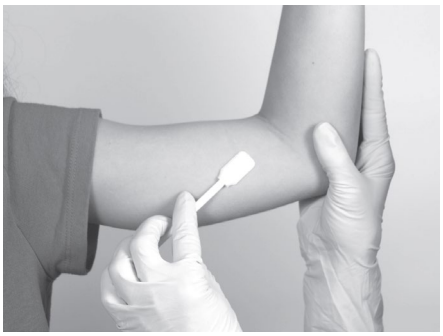
Preparing the Patient and the Insertion Site

The patient should be on his/her back, ideally with the arm least used (e.g., left arm for a right-handed person) positioned, either bent or extended, so that the physician has ready access to the inner aspect of the upper arm. Propping the arm with pillows may help the patient more easily hold the position. The suggested optimum site for subcutaneous insertion is approximately half-way between the shoulder and the elbow, in line with the crease between the biceps and triceps muscles.



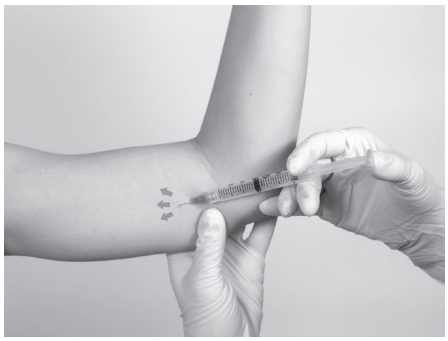
Antiseptic

Swab the insertion area with topical antiseptic, then overlay with the *fenestrated* Sterile Field drape provided, so that the opening is over the insertion site (for clarity of illustration, the following images do not show the drape).



Anesthetic
The method of anesthesia utilized (i.e., local, conscious sedation, general) is at the discretion of the healthcare provider.

If local anesthesia is selected: a vial of sterile local anesthetic (note that the exterior of the vial is not sterile) has been provided along with a sterile hypodermic needle for injection. After determining the absence of known allergies to the anesthetic agent, inject anesthetic into the subcutaneous tissue, starting at the planned incision site, then infiltrating along the intended subcutaneous insertion path, up to the length of the implant (a little more than one inch). Local anesthesia may also be supplemented by the use of distraction techniques.

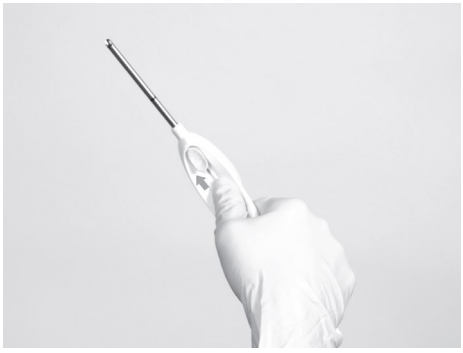


The following sections describe the suggested procedure for insertion of the implant using the Insertion Tool provided. The method of insertion used, however, is at the discretion of the healthcare provider performing the procedure.

Loading the Insertion Tool

The sterile Insertion Tool is comprised of a fixed handle attached to a retractable, bevel-tipped cannula, into the chamber of which the implant is to be placed for subcutaneous insertion. The cannula can be extended and retracted. The fully extended cannula contains a fixed piston upon which the implant, once inserted, rests. During the final step of the insertion procedure, the cannula will be retracted into the handle using the slide mechanism (green button), thereby exposing and leaving the implant to remain in the subcutaneous tissue.

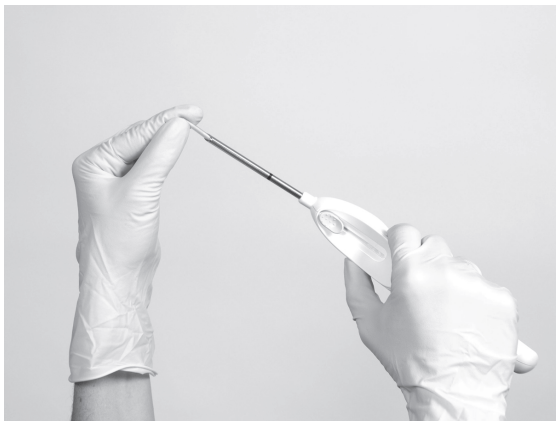
When first grasping the sterile Insertion Tool, confirm that the cannula is fully extended. Verify this by inspecting the position of the green retraction button. The button should be locked in position all the way forward, towards the cannula, farthest from the handle.



The implant can be picked up using sterile gloves or with the sterile mosquito clamp provided. Avoid bending or pinching the implant. Note that the implant may come out of its vial slightly curved and/or partially flattened after refrigerated storage. To help make the implant more symmetrical prior to loading into the Tool, you can roll the implant a few times (while wearing a sterile glove) between the fingers and thumb.

Insert the implant into the cannula of the Insertion Tool manually or using the mosquito clamp. When inserting the implant into the cannula, DO NOT FORCE the implant. If resistance is felt, the implant should be removed and manually manipulated or rolled as needed, and re-inserted into the cannula.

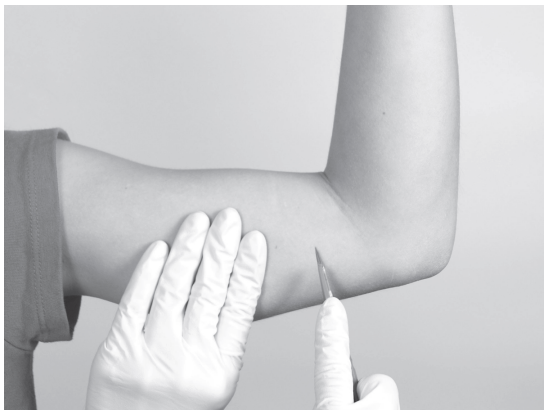
or



When fully inserted, the implant rests inside the cannula so that just the tip of the implant is visible at the beveled end of the cannula.

Making the Incision

Using the sterile scalpel provided, make an incision transverse to the long axis of the arm, and of a size adequate to allow the bore of the cannula to be inserted into the subcutaneous tissue. Be sure that the incision is positioned so that there is sufficient length of upper arm available to fit the implant easily within the intended insertion space.



Inserting the Implant

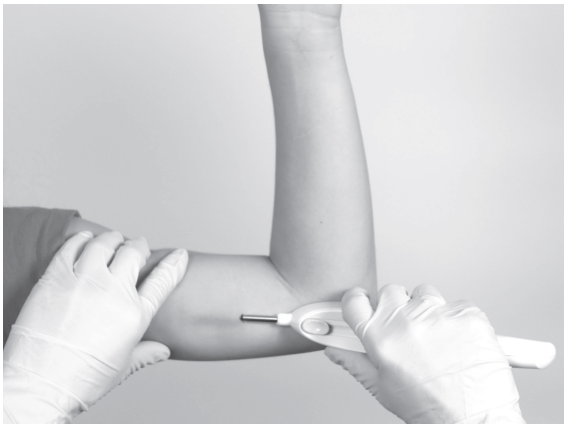
It is suggested that insertion may be easier if a "pocket" for the implant is first created by blunt dissection through the incision, subcutaneously along the path of the anesthetic, using the cannula of the loaded Insertion Tool, or using a sterile hemostatic clamp or equivalent surgical tool.

Be sure to VISIBLY RAISE THE SKIN (known as tenting) at all times during the pocket-making and insertion procedures to ensure correct subcutaneous placement ("just under the skin") of the implant. Note that the cannula of the Insertion Tool, or whatever tool is being used to create the pocket, SHOULD NOT ENTER MUSCLE TISSUE. Deep insertion of the implant will not affect the performance of SUPPRELIN LA, but may cause difficulty in the later removal of the implant.

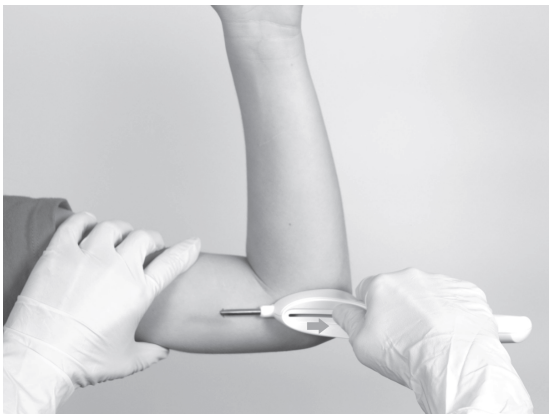
If using the cannula of the loaded Insertion Tool to create the pocket, carefully insert the tip of the cannula into the incision and advance through the subcutaneous tissue, while visibly raising the skin along the length of the cannula up to, but no farther than, the inscribed black line on the cannula. DO NOT DEPRESS THE GREEN RETRACTION BUTTON ON THE TOOL WHILE INSERTING OR ADVANCING THE TOOL INTO THE INCISION.

Pull the Tool back, almost to the beveled tip of the cannula, and advance the Tool forward again, so that the cannula re-enters the pocket completely, but no farther than the inscribed black line. Be sure to keep the insertion path just immediately subcutaneous.

If another tool was used to create the pocket, now insert the loaded cannula of the Insertion Tool containing the implant through the incision, up to the inscribed black line.



Hold the Insertion Tool in place with the base against the patient's arm (if possible) as you carefully move your thumb to the green retraction button. Depress the button to release the locking mechanism, then slide the button back toward the handle until it stops, all the while holding the body of the Insertion Tool in place.



Retracting the button causes the cannula to withdraw from the incision, leaving the implant in the subcutaneous tissue. DO NOT FURTHER ADVANCE THE CANNULA ONCE THE RETRACTION PROCESS HAS STARTED. Likewise, do not withdraw the Insertion Tool until the button is fully retracted or the implant may be pulled partially out of the incision. Once the retraction is complete, the Tool can be fully withdrawn.

NOTE: It may be helpful during the process of retraction and withdrawal of the cannula to apply pressure to the skin over the implant, to help ensure that the implant remains in the subcutaneous pocket.

If there is a need to re-start the process at any time during the insertion procedure, withdraw the Insertion Tool, carefully extract the implant from the cannula and reset the retraction button on the Tool to its forward-most position. Examine the implant before reloading the implant into the Insertion Tool, and start again.

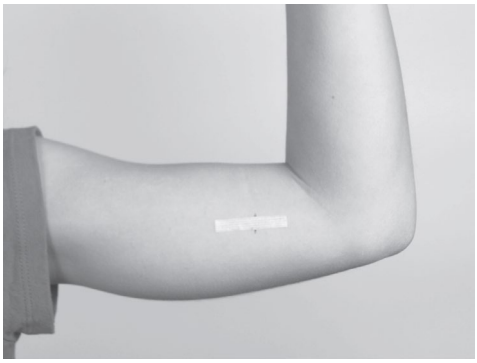
Placement of the implant should be confirmed by palpation. Note that the tip of a properly-placed implant may not be visible through the incision.

After implantation, briefly cover the site with a sterile gauze pad and apply pressure to ensure hemostasis.

Closing the Incision

To close the incision, you can use the absorbable sutures and/or the sterile adhesive surgical strips provided. To improve adhesion of the strips, you can apply benzoin tincture antiseptic (provided) to the

skin, and let it dry, before applying the adhesive strips.



Once closed, cover the incision site with sterile gauze pads and secure the dressing with the bandage provided.

Please provide the patient's parent or guardian with a Patient Information Leaflet, which includes information about the implant and instructions on proper care of the insertion site.

Suggested Removal Procedure

SUPPRELIN LA should be removed after 12 months of therapy. Most of the supplies necessary to remove the implant, including the local anesthetic and the sterile mosquito clamp, are provided in the Implantation Kit that is shipped along with a new SUPPRELIN LA implant. Note that the Implantation Kit is to be stored at room temperature and must *not* be refrigerated. See the **Suggested Insertion Procedure** above for further instructions.

Removal of the SUPPRELIN LA implant is a surgical procedure. Sterile gloves and aseptic technique must be used to minimize any chance of infection.

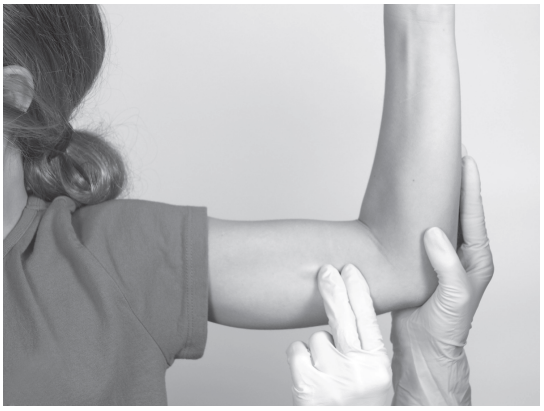
Setting up the Sterile Field

Using proper aseptic technique, the sterilized components of the Implantation Kit needed for the implant removal procedure are to be carefully dispensed from their packaging out onto the Sterile Field drape (*non*-fenestrated) provided. NOTE THAT THE KIT BOX AND ALL PACKAGING ARE NOT STERILE and should be kept off of the Sterile Field drape. DO NOT PLACE THE VIAL OF LOCAL ANESTHETIC ONTO THE DRAPE as the exterior surface of the vial is not sterile.

Preparing the Patient and the Site

The patient should be on his/her back, with the arm containing the implant positioned, either bent or extended, so that the physician has ready access to the inner aspect of the upper arm. Propping the arm with pillows may help the patient more easily hold the position.

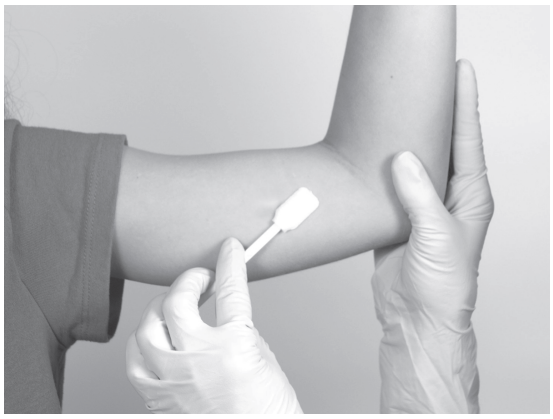
The implant to be removed should first be located by palpating the inner aspect of the upper arm, near the incision from the prior year.



Generally, the previous implant is readily palpated. In the event the implant is difficult to locate, ultrasound may be used. If ultrasound fails to locate the implant, other imaging techniques such as CT or MRI may be used to locate it (plain films are not recommended as **the implant is not radiopaque**).

Antiseptic

Swab the area above and around the previous implant with topical antiseptic. Overlay the area with the *fenestrated* Sterile Field drape provided, so that the hole is over the previous insertion site (for clarity of illustration, the following images do not show the drape).

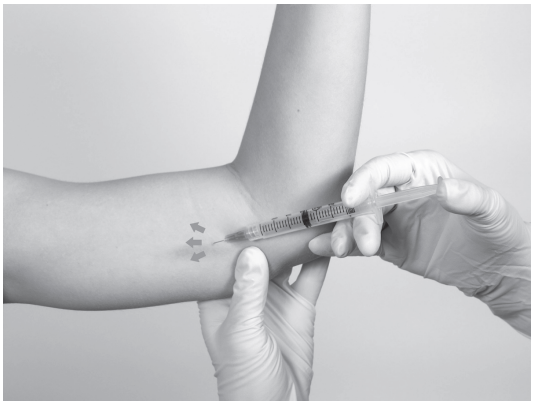


Anesthetic

The method of anesthesia utilized (i.e., local, conscious sedation, general) is at the discretion of the healthcare provider.

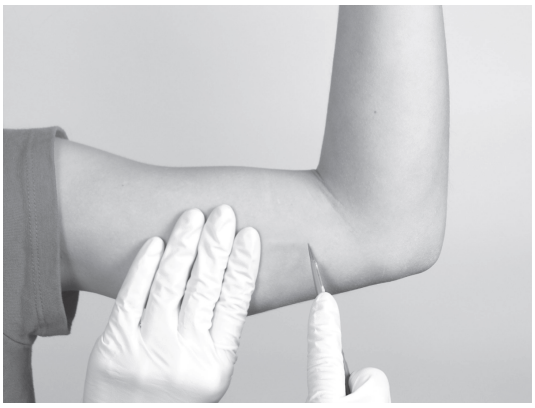
If local anesthesia is selected: a vial of sterile local anesthetic (note that the exterior of the vial is not sterile) has been provided along with a sterile hypodermic needle for injection. After determining

the absence of known allergies to the anesthetic agent, inject anesthetic into the subcutaneous tissue at and around the site of the intended incision (the site of the previous implant). Local anesthesia may also be supplemented by the use of distraction techniques.



Making the Incision and Removing the Implant

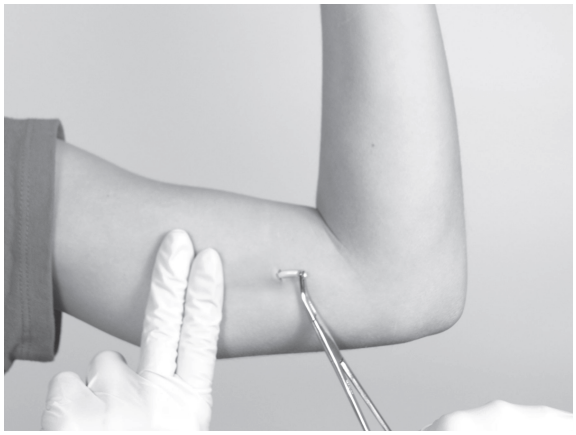
Using the sterile scalpel provided, make an incision of a size adequate to allow the implant to be easily removed and, if a new implant will be inserted, large enough for the bore of the cannula of the Insertion Tool provided.



Generally, the tip of the implant will be visible through the incision, possibly covered by a pseudocapsule of tissue. In order to facilitate the removal of the implant, it may be necessary to palpate the head of the implant through the incision using your smallest finger, especially if the head of the implant is not readily visible. In addition, you may need to push down on the distal end of the implant and "massage it forward" towards the incision.

Carefully nick the pseudocapsule to reveal the polymer tip of the implant. It may be beneficial to insert the sterile mosquito clamp provided into the hole created in the pseudocapsule and expand by opening the clamp. Widening the opening of the pseudocapsule may ease the extraction of the implant.

Gently but securely grasp the implant with the sterile mosquito clamp and extract the implant.



Dispose of the implant in a proper manner, treating it like any other bio-waste.

Briefly cover the site with a sterile gauze pad and apply pressure to ensure hemostasis.

If inserting a new implant, see the **Suggested Insertion Procedure** instructions provided above. Note that you can insert the new implant into the same "pocket" as the removed implant, or make a new incision at a different site in the same arm or in the contralateral arm.

If a new implant is not to be inserted, proceed to close the incision.

Closing the Incision

To close the incision, you can use the absorbable sutures and/or the sterile adhesive surgical strips provided. To improve adhesion of the strips, you can apply benzoin tincture antiseptic (provided) to the skin, and let it dry, before applying the adhesive strips.

Once closed, cover the incision site with sterile gauze pads and secure the dressing with the bandage provided.

3 DOSAGE FORMS AND STRENGTHS

SUPPRELIN LA is a sterile, nonbiodegradable, diffusion-controlled, hydrogel polymer reservoir drug delivery system designed to deliver histrelin acetate continuously for 12 months after subcutaneous implantation. The sterile implant contains 50 mg histrelin acetate and delivers approximately 65 mcg histrelin acetate per day over 12 months.

4 CONTRAINDICATIONS

SUPPRELIN LA is contraindicated in:

- Patients who are hypersensitive to gonadotropin releasing hormone (GnRH) or GnRH agonist analogs
- Pregnancy *[see Use in Specific Populations (8.1)]*.

5 WARNINGS AND PRECAUTIONS

5.1 Initial Agonistic Action

SUPPRELIN LA, like other GnRH agonists, initially causes a transient increase in serum concentrations of estradiol in females and testosterone in both sexes during the first week of treatment. Patients may experience worsening of symptoms or onset of new symptoms during this period. However, within 4 weeks of histrelin therapy, suppression of gonadal steroids occurs and manifestations of puberty decrease.

5.2 Implant Breakage

Implant insertion is a surgical procedure and it is important that the insertion instructions are followed

to avoid potential complications. The insertion and removal of the implant should be done aseptically. Proper surgical technique is critical in minimizing adverse events related to the insertion and the removal of the histrelin implant. On occasion, localizing and/or removal of implant products have been difficult and imaging techniques were used, including ultrasound, CT, or MRI (note: the histrelin implant is not radiopaque). In some cases the implant broke during removal and multiple pieces were recovered. Confirm that the entire implant has been removed. If the implant was not retrieved completely, the remaining pieces should be removed following the instructions in the Suggested Removal Procedure section *[see Dosage and Administration (2.2)]*. Rare events of spontaneous extrusion of the implant have been observed in clinical trials. During SUPPRELIN LA treatment, patients should be evaluated for evidence of clinical and biochemical suppression of CPP manifestations (see Section 5.6, Monitoring and Laboratory tests). Detailed instructions on the insertion and removal procedures of the implant are provided above *[see Dosage and Administration (2.2)]*.

5.3 Psychiatric Events

Psychiatric events have been reported in patients taking GnRH agonists, including SUPPRELIN LA. Postmarketing reports with this class of drugs include symptoms of emotional lability, such as crying, irritability, impatience, anger, and aggression. Monitor for development or worsening of psychiatric symptoms during treatment with SUPPRELIN LA *[see Adverse Reactions (6)]*.

5.4 Convulsions

Postmarketing reports of convulsions have been observed in patients receiving GnRH agonists, including SUPPRELIN LA. Reports with GnRH agonists have included patients with a history of seizures, epilepsy, cerebrovascular disorders, central nervous system anomalies or tumors, and patients on concomitant medications that have been associated with convulsions such as bupropion and SSRIs. Convulsions have also been reported in patients in the absence of any of the conditions mentioned above.

5.5 Pseudotumor Cerebri (Idiopathic Intracranial Hypertension)

Pseudotumor cerebri (idiopathic intracranial hypertension) have been reported in pediatric patients receiving GnRH agonists. Monitor patients for signs and symptoms of pseudotumor cerebri, including headache, papilledema, blurred vision, diplopia, loss of vision, pain behind the eye or pain with eye movement, tinnitus, dizziness, and nausea.

5.6 Monitoring and Laboratory Tests

LH, FSH and estradiol or testosterone should be monitored at 1 month post implantation then every 6 months thereafter. Additionally, height (for calculation of height velocity) and bone age should be assessed every 6-12 months.

6 ADVERSE REACTIONS

The following serious adverse reactions are described here and elsewhere in the label:

- Initial Agonist Action *[see Warnings and Precautions (5.1)]*

- Implant Breakage *[see Warnings and Precautions (5.2)]*
- Psychiatric Events *[see Warnings and Precautions (5.3)]*
- Convulsions *[see Warnings and Precautions (5.4)]*
- Pseudotumor Cerebri (Idiopathic Intracranial Hypertension) *[see Warnings and Precautions (5.5)]*

6.1 Overall Adverse Reaction Profile

The most common adverse reactions with SUPPRELIN LA involved the implant site. Local reactions after implant insertion include bruising, pain, soreness, erythema and swelling.

During the early phase of therapy, gonadotropins and sex steroids rise above baseline because of the natural stimulatory effect of the drug. Therefore, an increase in clinical signs and symptoms may be observed *[see Warnings and Precautions (5.1)]*.

6.2 Adverse Reactions in Clinical Trials

Because clinical trials are conducted under widely varying conditions, adverse reaction rates observed in the clinical trials of a drug cannot be directly compared to rates in the clinical trials of another drug and may not reflect the rates observed in practice.

The safety of SUPPRELIN LA in children with CPP was evaluated in two single-arm clinical trials conducted in a total of 47 patients (44 females and 3 males) over a period of time ranging from 9 to 18 months. The most commonly reported adverse reaction was implant site reaction, which was

reported by 24 of 47 (51.1%) patients. Implant site reaction includes discomfort, bruising, soreness, pain, tingling, itching, implant area protrusion and swelling. Two subjects experienced a serious adverse reaction: 1 subject who coincidentally had Stargardt's Disease experienced amblyopia and 1 subject had a benign pituitary tumor (pituitary adenoma). One subject discontinued the study due to an adverse reaction of infection at the implant site. There were no clinically meaningful findings in standard clinical hematology and chemistry tests and/or in vital signs. The incidence of implantation adverse events reported by more than 2 patients are summarized in Table 1.

Table 1: Incidence of implantation adverse reactions reported by 2 2 patients treated with SUPPRELIN LA in both clinical trials

Adverse Reactions	N=47 N (%)
Implant site reaction	24 (51.1)
Keloid scar	3 (6.4)
Scar	3 (6.4)
Suture related complication	3 (6.4)
Application site pain	2 (4.3)
Post procedural pain	2 (4.3)

The following adverse reactions were reported as possibly related or related in l patient each: wound infection, breast tenderness, dysmenorrhea, epistaxis, erythema, feeling cold, gynecomastia, headache, menorrhagia, migraine, mood swings, pituitary tumor benign, pruritus, weight increased, disease progression and influenza-like illness. The adverse reaction metrorrhagia was reported as possibly related or related in 2 patients.

6.3 Post-marketing Experience

The following adverse reactions have been identified during post approval use of SUPPRELIN LA. Because these reactions are reported voluntarily from a population of uncertain size, it is not always possible to reliably estimate their frequency or establish a causal relationship to drug exposure.

General Disorders and Administration Site Conditions: implant breakage

Psychiatric Disorders: Emotional lability, such as crying, irritability, impatience, anger, and aggression. Depression, including rare reports of suicidal ideation and attempt. Many, but not all, of these patients had a history of psychiatric illness or other comorbidities with an increased risk of depression.

Nervous System Disorders: seizures. Pseudotumor cerebri (idiopathic intracranial hypertension) have been observed with GnRH agonists.

7 DRUG INTERACTIONS

Overview: No formal drug-drug, drug-food, or drug-herb interaction studies were performed with SUPPRELIN LA.

Drug-Laboratory Interactions: Therapy with SUPPRELIN LA results in suppression of the pituitary-gonadal system. Results of diagnostic tests of pituitary gonadotropic and gonadal functions conducted during and after SUPPRELIN LA therapy may be affected. SUPPRELIN LA decreased mean serum insulin-like growth factor-1 (IGF-1) levels by approximately 11% in one study (Study 1). SUPPRELIN LA increased the serum concentration

of dehydroepiandrosterone (DHEA) in 8 of 36 patients in another study (Study 2).

8 USE IN SPECIFIC POPULATIONS

8.1 Pregnancy

Risk Summary

SUPPRELIN LA is contraindicated during pregnancy *[see Contraindications (4)]* since expected hormonal changes that occur with SUPPRELIN LA treatment increase the risk for pregnancy loss. The limited data with histrelin use in pregnant women are insufficient to determine a drug-associated risk for major birth defects or adverse developmental outcomes. Consistent with mechanism of action for SUPPRELIN LA *[see Clinical Pharmacology (12.1)],* animal reproduction studies showed an increase in fetal loss at clinically relevant exposures.

The estimated background risk of major birth defects and miscarriage for the indicated population is unknown. In the US general population, the estimated background risk of major birth defects and miscarriage in clinically recognized pregnancies is 2-4% and 15-20%, respectively.

Data

Animal Data

Histrelin acetate administered to pregnant rats during the period of organogenesis increased fetal mortality and post-implantation loss at doses of 1, 3, 5 or 15 mcg/kg/day, approximating clinical exposure based on body surface area. These dosages also reduced maternal body weight gain, stimulated ovarian follicular development, increased placental weight and caused abnormal morphology and an

increase in fetal size. Histrelin acetate administered to pregnant rabbits during the period of organogenesis increased fetal mortality and abortion/early termination at the two highest doses and caused total litter loss at all doses of 20, 50 or 80 mcg/kg/day (approximately 3- to 12-times clinical exposures based on body surface area).

8.2 Lactation

Risk Summary

There are no data on the presence of SUPPRELIN LA in human or animal milk, the effects on the breastfed infant, or the effects on milk production. Absorption and systemic activity are not expected from potential exposure to the peptide, histrelin, in the breast milk. The developmental and health benefits of breastfeeding should be considered along with the mother's clinical need for SUPPRELIN LA and any potential adverse effects on the breastfed child from SUPPRELIN LA or from the underlying maternal condition.

8.4 Pediatric Use

Safety and effectiveness in pediatric patients below the age of 2 years have not been established. The use of SUPPRELIN LA in children under 2 years is not recommended.

10 OVERDOSAGE

There have been no reports of overdose in SUPPRELIN LA clinical trials. High doses of histrelin acetate injection in animal studies were generally associated only with effects attributed to the expected pharmacology. The method of drug

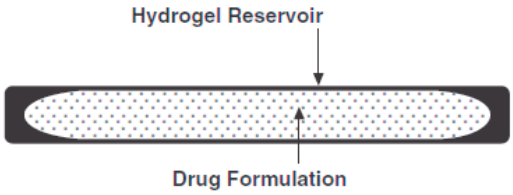
delivery makes accidental or intentional overdosage unlikely.

11 DESCRIPTION

SUPPRELIN LA is a sterile, non-biodegradable, diffusion-controlled, hydrogel polymer reservoir containing histrelin acetate, a synthetic nonapeptide analog of the naturally occurring gonadotropin releasing hormone (GnRH) possessing a greater potency than the natural sequence hormone. SUPPRELIN LA is designed to deliver approximately 65 mcg histrelin acetate per day over 12 months.

The SUPPRELIN LA implant looks like a small thin flexible tube and consists of a 50-mg histrelin acetate drug core inside a 3.5 cm by 3 mm, cylindrical, hydrogel polymer reservoir (Figure 1). The implant may appear partially to completely full with variation in color from off-white to light brown. The color may be uneven within the core.

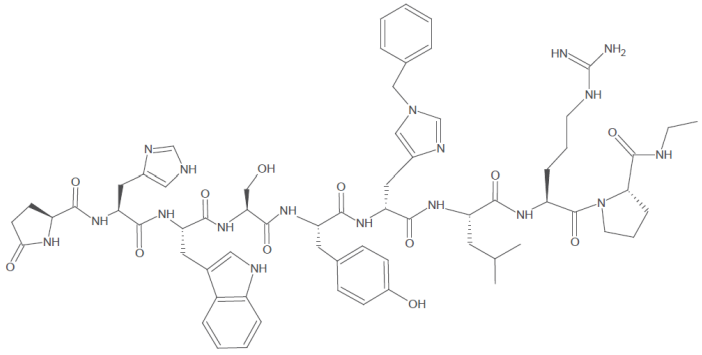
Figure 1. SUPPRELIN LA Implant Diagram (not to scale)



The chemical name of histrelin acetate is: L-Pyroglutamyl-L-histidyl-L-tryptophyl-L-seryl-L-tyrosyl-N-benzyl-D-histidyl-L-leucyl-L-arginyl-L-proline N-ethylamide, acetate salt.

The molecular formula for histrelin acetate is C66H86N18O12 x 2 CH3COOH and its molecular weight is 1443.70 (or 1323.52 as free base). Histrelin is also chemically described as 5-oxo-L-prolyl-L-histidyl-L-tryptophyl-L-seryl-L-tyrosyl-Nt-benzyl-D-histidyl-L-leucyl-L-arginyl-N-ethyl-L-prolinamide diacetate. The chemical structure of the free base (histrelin) is represented below in Figure 2.

Figure 2. Structure of Histrelin



The drug core also contains the inactive ingredient stearic acid NF. The hydrogel polymer reservoir is a hydrophilic cartridge composed of 2-hydroxyethyl methacrylate, 2-hydroxypropyl methacrylate, trimethylolpropane trimethacrylate, benzoin methyl ether, Perkadox-16, and Triton X-100. Each implant is packaged hydrated in a glass vial containing 2 mL of sterile 1.8% sodium chloride solution, so that it is primed for immediate release of the drug upon insertion.

A single use, sterile, Insertion Tool is provided along with the implant that can be used for the placement of the SUPPRELIN LA implant into the

subcutaneous tissue of the inner aspect of the upper arm. The Insertion Tool is enclosed in a sterile bag and is provided separately from the implant in the Implantation Kit [*see Recommended Procedure for Implant Insertion and Removal (2.2)*].

12 CLINICAL PHARMACOLOGY

12.1 Mechanism of Action

SUPPRELIN LA is a GnRH agonist and an inhibitor of gonadotropin secretion when given continuously. It delivers approximately 65 mcg histrelin acetate per day. Both animal and human studies indicate that following an initial stimulatory phase, chronic, subcutaneous administration of histrelin acetate desensitizes responsiveness of the pituitary gonadotropin which, in turn causes a reduction in ovarian and testicular steroidogenesis.

In humans, administration of histrelin acetate results in an initial increase in circulating levels of LH and FSH, leading to a transient increase in concentration of gonadal steroids (testosterone and dihydrotestosterone in males, and estrone and estradiol in premenopausal females).

However, continuous administration of histrelin acetate causes a reversible down-regulation of the GnRH receptors in the pituitary gland and desensitization of the pituitary gonadotropes. These inhibitory effects result in decreased levels of LH and FSH.

12.2 Pharmacodynamics

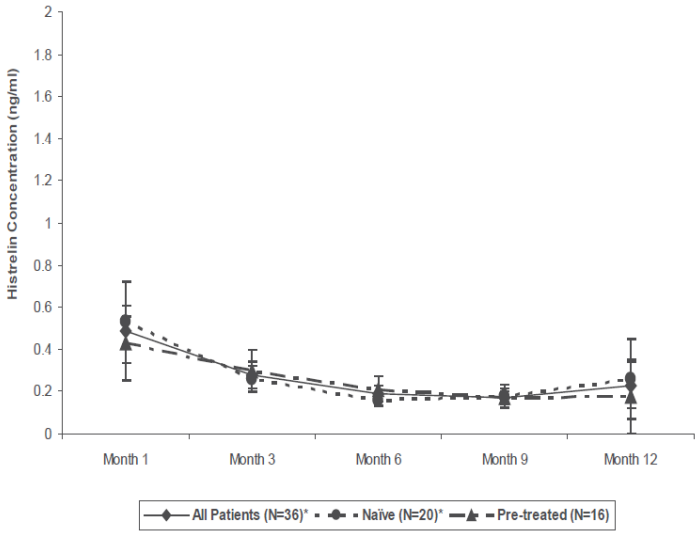
Long-term treatment with histrelin acetate suppresses the LH response to GnRH causing LH levels to decrease to prepubertal levels within 1

month of treatment. As a result, serum concentrations of sex steroids (estrogen or testosterone) also decrease. Consequently, secondary sexual development ceases to progress in most patients. Additionally, linear growth velocity is slowed which improves the chance of attaining predicted adult height.

12.3 Pharmacokinetics

Pharmacokinetics of histrelin after implantation of SUPPRELIN LA was evaluated in a total of 47 children with CPP (11 subjects in Study 1 and 36 subjects in Study 2). Patients were examined at 4 weeks after implant insertion and a few times throughout the treatment period. Median serum histrelin concentrations remained above the limit of quantification for the treatment period. Histrelin acetate levels were sustained throughout the study period for most subjects (Figure 3). The median of maximum serum histrelin concentrations over the study period was 0.43 ng/mL, which is expected to maintain gonadotropins at prepubertal levels. There was no apparent pharmacokinetic difference between naYve subjects to a LHRH agonist treatment and subjects who had previous treatment with a LHRH agonist (Figure 3).

Figure 3. Mean and Standard Deviation of Serum Histrelin Concentrations (ng/mL) Results at Each Visit



13 NONCLINICAL TOXICOLOGY

13.1 Carcinogenesis, Mutagenesis, Impairment of Fertility

Carcinogenicity studies were conducted in rats for 2 years at doses of 5, 25 or 150 mcg/kg/day (up to 11 times human exposures using body surface area comparisons, based on a 65 mcg/day dose in humans) and in mice for 18 months at doses of 20, 200, or 2000 mcg/kg/day (at less than therapeutic exposure to 70 times human exposure using body surface area comparisons, based on a 65 mcg/day dose in humans). As seen with other GnRH agonists, histrelin injection administration was associated with an increase in tumors of hormonally responsive tissues. There was a significant increase in pituitary adenomas in rats at mid and high doses (2-11 times human exposure based on body surface area comparisons with a 65 mcg/day human dose). There was an increase in pancreatic islet-cell adenomas in treated female rats

and a non-dose-related increase in testicular Leydig-cell tumors (highest incidence in the low-dose group). In mice, there was significant increase in mammary-gland adenocarcinomas in all treated females. In addition, there were increases in stomach papillomas in male rats given high doses, and an increase in histiocytic sarcomas in female mice at the highest dose.

Mutagenicity studies have not been performed with histrelin acetate. Saline extracts of implants with and without histrelin acetate were negative in a battery of genotoxicity studies. Fertility studies have been conducted in rats and monkeys given subcutaneous daily doses of histrelin acetate up to 180 mcg/kg/day (up to 13 and 30 times human exposure, respectively using body surface area comparisons, based on a 65 mcg/day human dose) for 6 months and full reversibility of fertility suppression was demonstrated. The development and reproductive performance of offspring from parents treated with histrelin acetate has not been investigated.

14 CLINICAL STUDIES

The efficacy of SUPPRELIN LA in children with CPP has been evaluated in two single-arm, open label studies. Study 1 was conducted in 11 pretreated female patients, 3.7 to 11.0 years of age. Study 2 was conducted in 36 patients (33 females and 3 males), 4.5 to 11.6 years of age. Sixteen pretreated and 20 treatment-narve patients were enrolled in Study 2. Baseline patient characteristics were typical of patients with CPP. Efficacy assessments were similar in both studies and included endpoints that

measured the suppression of gonadotropins (luteinizing hormone and follicle stimulating hormone) and gonadal sex steroids (estrogen in girls and testosterone in boys, respectively) on treatment. Other assessments were clinical (evidence of stabilization or regression of signs of puberty) or gonadal steroid-dependent (bone age, linear growth). In Study 2, the primary measure of efficacy was LH suppression.

In Study 2, suppression of LH was induced in all treatment narve subjects and maintained in all pretreated subjects at Month 1 after implantation and continued through Month 12 (suppression was defined as a peak LH < 4 mIU/mL following stimulation with the GnRH analog leuprolide acetate).

Secondary efficacy hormone assessments (FSH, estradiol and testosterone) and additional efficacy assessments (bone age advancement, linear growth, clinical progression of puberty) indicated stabilization of disease. Estradiol suppression was present in all 33 girls (100%) through Month 9 and 97% at Month 12. Testosterone suppression was maintained in the three pre-treated males participating in Study 2. The SUPPRELIN LA effect on efficacy endpoints in the Study 1 was consistent with that observed in Study 2.

16 HOW SUPPLIED/STORAGE AND HANDLING

SUPPRELIN LA (NDC 67979-002-01) is supplied in a corrugated shipping carton that contains 2 inner cartons: a small one for the vial containing the SUPPRELIN LA implant, which is shipped with a

cold pack inside a polystyrene cooler that must be refrigerated upon arrival, and a larger one comprising the Implantation Kit, which must *not* be refrigerated, for use during insertion or removal of SUPPRELIN LA.

The SUPPRELIN LA implant contains 50 mg of histrelin acetate. The SUPPRELIN LA implant carton contains a cold pack for refrigerated shipment and a small carton containing an amber plastic pouch. Inside the pouch is a glass vial with a Teflon-coated stopper and an aluminum seal, containing the implant in 2 mL of sterile 1.8% sodium chloride solution. (**Note**: The 3.5 mL vial is not completely filled with saline).

Upon receipt, refrigerate the small carton containing the amber plastic pouch and glass vial (with the implant inside) until the day of insertion. The implant vial should not be opened until just before the time of insertion.

SUPPRELIN LA is stable when stored refrigerated, in its sealed vial, pouch, and carton, at 2-8°C (36-46°F) until the expiration date provided. Excursion permitted to 25°C (77°F) for 7 days. Do not freeze. Protect from light.

17 PATIENT COUNSELING INFORMATION

Advise the patient to read the FDA-Approved patient labeling (Medication Guide).

Initial Agonistic Action
Patients should be advised that a transient worsening of symptoms of puberty or onset of new symptoms may occur initially. However, within 4

weeks of histrelin therapy, complete suppression of gonadal steroids occurs and manifestations of puberty decrease *[see Warnings and Precautions (5.1)]*.

Post-insertion Care

Patients should be instructed to refrain from getting the inserted arm wet for 24 hours and from strenuous exertion of the inserted arm for 7 days after implant insertion to allow the incision to fully close. The adhesive elastic bandage can be removed at that time. The patient should not remove the surgical strips; rather, the strips should be allowed to fall off on their own after several days.

Psychiatric Adverse Events

Inform caregivers that symptoms of emotional lability, such as crying, irritability, impatience, anger, and aggression, have been observed in patients receiving GnRH agonists, including SUPPRELIN LA. Alert caregivers to the possibility of development or worsening of psychiatric symptoms, including depression, during treatment with SUPPRELIN LA *[see Warnings and Precautions (5.3), Adverse Reactions (6.3)]*.

Convulsions

Inform caregivers that reports of convulsions have been observed in patients receiving GnRH agonists, including SUPPRELIN LA. Patients with a history of seizures, epilepsy, cerebrovascular disorders, central nervous system anomalies or tumors, and patients on concomitant medications that have been associated with convulsions may be at risk *[see Warnings and Precautions (5.4)]*.

Pseudotumor Cerebri (Idiopathic Intracranial Hypertension)

Inform patients and caregivers that reports of pseudotumor cerebri (idiopathic intracranial hypertension) have been observed in pediatric patients receiving GnRH agonists. Advise patients and caregivers to monitor for headache, and vision issues such as blurred vision, double vision, loss of vision, pain behind the eye or pain with eye movement, ringing in the ears, dizziness, and nausea. Advise patients and caregivers to contact their healthcare provider if the patient develops any of these symptoms. *[see Warnings and Precautions (5.5)]*.

Common Adverse Reactions

Patients should be advised to report to their physician any severe pain, redness, or swelling in and around the implant site. Infrequently, SUPPRELIN LA may be expelled from the body through the original incision site, rarely without the patient noticing. The patient should be instructed to monitor the incision site until it is healed. The patient should also return for routine checks of their condition and to ensure that SUPPRELIN LA is present and functioning in his/her body *[see Adverse Reactions (6.1)]*.

For more information, call 1-800-462-3636 or visit www.supprelinla.com.

Distributed by:
Endo Pharmaceuticals Inc.
Malvern, PA 19355 USA

Revised: 04/2022

Reproductive Technologies, Inc.
2115 Milvia Street, Suite 201
Berkeley CA 94704-1157
Tel. (510) 841-1858 - Fax (510) 841-0332
e-mail: info@thespermbankofca.org
Website: www.thespermbankofca.org

Invoice

Invoice	INV00965
Date	3/1/2021
Page	1
Req. Ship Date	3/1/2021 0/0/0000

HISTORICAL

Bill To:

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[redacted] CA [redacted]
United States

Ship To: (000) 000-0000 Ext. 0000

[redacted] [S.H.]
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[redacted] CA [redacted]

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Master No.
AB	94971		ANNUAL STORAGE	Net 15	3/1/2021	52,024

Ordered	Shipped	B/O	Item Number	Description	Discount	Unit Price	Ext. Price
1	1	0	DD ORIENTATION/INITIA	DD consultation and account setup	$0.00	$900.00	$900.00
1	1	0	FIRST LAB DD/KD	Blood Panels 1 and 4 and Urine CT/GC	$0.00	$650.00	$650.00
1	1	0	CLIENT STORAGE (1 YE/	Annual Storage 2020-2021	$0.00	$450.00	$450.00

You have set up a Sperm Storage Account. Today's fees cover the first 12 months of Storage. 2/23/21 Four vials aded to your account. Thanks!

Subtotal	$2,000.00
Misc	$0.00
Tax	$0.00
Freight	$0.00
Trade Discount	$0.00
Total	$2,000.00

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EXHIBIT K 236a

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Berkeley CA 94704-1157
Phone 510.841.1858
Fax 510.841.0332
billing@tsbca.org
www.thespermbankofca.org

Invoice	SINV22-1483
Date	February 18, 2022
Page	1
Req. Ship Date	
Req. Arrival Date	

Bill To:

[redacted] [S.H.]
[redacted] CA [redacted]

Ship To:

[redacted] [S.H.]
[redacted] CA, [redacted]
Phone No. [redacted]

Cust ID	Health Worker	Shipping Method	Payment Terms
94971	SO		Credit Card (eBiz Charge)

Description	Quantity	Unit	Unit Price	Amount
Annual Storage 2022-2023	1	Each	500.00	500.00
			Total $	**500.00**

Invoice is Paid

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Address Change? Please contact your employer's benefit department.
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Statement Period
06/17/21 - 09/15/21

THIS IS NOT A BILL

Customer Care 1-866-348-1286

Productive Dr. Visits

Be sure to make the most of your doctor visits. Before you go, write down when your problem began, your symptoms, what might have led to the problem and any prescription or over-the-counter drugs or vitamins/supplements you take. During your visit, bring up your main issue first and then tell your doctor about any recurring problems. Listen carefully and ask questions. This is a great way to build a relationship with your doctor and be proactive in your health care.

Medical claims where payments may be needed from you:

Claims processed between **06/17/21** to **09/15/21**

	Pay your provider(s) when they bill you	Applied To Deductible
[redacted]	[redacted]	[redacted]

06/24/21 services for [redacted] provided by **'GOLDEN STATE'**
Claim Number: 0CT1641820101
Provider Billed: **$265.10** Payments and Discounts: **-$122.95**

[S.H.]

Please see the next page for more information
Page 1 of 8

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0000016214092-259HSEPRT10010031047001

238a
EXHIBIT L

Medical claims where payments may be needed from you: continued

Claims processed between 06/17/21 to 09/15/21		Pay your provider(s) when they bill you	Applied To Deductible
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08/04/21 services for [redacted] provided by 'J LEE' Claim Number: 0CW3504121602 Provider Billed: $209,820.34 Payments and Discounts: -$207,857.08	[S.H.]	$1,963.26	$0.00
08/11/21 services for [redacted] provided by 'E AICARDI' Claim Number: 0CW5115036302 Provider Billed: $20.00 Payments and Discounts: -$18.00	[S.H.]	$2.00	$0.00
08/18/21 services for [redacted] provided by 'J IOCCO' Claim Number: 0CW7568759501 Provider Billed: $230.00 Payments and Discounts: -$110.00	[S.H.]	$120.00	$0.00
08/18/21 services for [redacted] provided by 'J IOCCO' Claim Number: 0CW7568759501 Provider Billed: $230.00 Payments and Discounts: -$147.50	[S.H.]	$82.50	$0.00
08/24/21 services for [redacted] provided by 'J IOCCO' Claim Number: 0CW9632800301 Provider Billed: $230.00 Payments and Discounts: -$110.00	[S.H.]	$120.00	$0.00
[redacted]	[W.H.]		
	Total:	$3,105.84	$264.69

For more information about these claims, please refer to the Explanation of Benefits or visit: www.myuhc.com.

This is not a bill. Your provider will bill you directly unless you have already paid them. Please check your records. These charges represent your responsibility as defined by your health benefit plan. They may include your deductible, coinsurance, or a product or service that is not an eligible expense. If you have coverage with another insurance carrier or Medicare, these charges may not include any product or service in which the other insurance carrier or Medicare was primary. In addition, the amount in the "Pay your provider(s) when they bill you" area above may include payments made to the subscriber. Please see your coverage documents for more information.

Tracking Your Deductibles and Maximums

Your Deductibles as of 09/15/21 for Plan Year 01/01/21 - 12/31/21

In-Network (Medical/Rx Combined)

	Annual	Applied		Remaining
EDWARD	$3,000.00	$233.00	SATISFIED	$0.00
CHRISTINE	$3,000.00	$733.04	SATISFIED	$0.00
[redacted] [S.H.]	$3,000.00	$2,033.96	SATISFIED	$0.00
[redacted] [W.H.]	$3,000.00	$0.00	SATISFIED	$0.00

Out-of-Network

	Annual	Applied		Remaining
EDWARD	$3,000.00	$233.00	SATISFIED	$0.00
CHRISTINE	$3,000.00	$733.04	SATISFIED	$0.00
[redacted] [S.H.]	$3,000.00	$2,033.96	SATISFIED	$0.00
[redacted] [W.H.]	$3,000.00	$0.00	SATISFIED	$0.00

Please see the next page for more information

0000016214092-259HSEPRT10010031047002

Case 3:23-cv-05316-SI Document 90
Filed: 08/30/24

EXHIBIT M

Re: [Q] Fertility Preservation ?? was Re: update on **[S.H.]**'s health.

Ted Hudacko

Thu 11/11/2021 5:46 PM

To: Daniel S. Harkins dshark1@pacbell.net;
Bcc: Paula Paula@samedaylegal.net; Susan Susan@samedaylegal.net;

Dear Mr. Harkins,

I phoned you today and we spoke very briefly. The reason for my call was that you had not replied to my voice message left for you in October requesting a call back. I also have sent you two emails in November. I am not represented so you are not forbidden to speak to me as you claimed when I attempted to speak to you in July 2019. I don't know what you mean by your comment today that I was using a "tone" with you. This is absurd and simply evasiveness by you.

[S.H.], my son and whom you represent, is being sterilized by the administration of Supprellin LA implant. You indicated today you had not read either my November emails, nor were aware of the procedure **[S.H.]** had, nor had consulted with either **[S.H.]** nor Christine Hudacko, the mother either before or since **[S.H.]**'s procedure. The custody orders do not permit sterilization. The orders also do not

permit surgery which the implant procedure is a minor surgery requiring anaesthesia.
Supprellin is the trade name for histrelin acetate and is as I attempted to explain to you today, not approved by the FDA for uses other than Central Precocious Puberty (CPP) in boys 11 and younger or Prostate Cancer in older men. Neither apply to **[S.H.]** who is 17 and undergoing normal, not precocious puberty. The other notorious use for histrelin acetate is chemical castration of convicted sex offenders. I attempted to explain this to you and asked why are you allowing my son to be sterilized? You didn't answer my question but instead made your comment about "tone," stated you did not have to speak with me, then hung up.

I'd like some answers from you how and why you are allowing **[S.H.]** to be sterilized? **[S.H.]** is a deeply troubled teenager and cannot possibly understand the consequences what this means. The permanent and irreversible effect of histrelin acetate is accomplished in as little as four months, meaning that **[S.H.]** already has had this implant 3 months. Not only will this render **[S.H.]** incapable of reproduction, but incapable of sexual response and orgasm. I cannot believe that you are not aware of **[S.H.]**'s status of health and were apparently unaware that this procedure had taken place nor could represent that you verified **[S.H.]** understood the consequences and can properly give informed consent.

You have accepted a substantial amount of payment from me in the form of many checks. I don't have the exact sum handy but I reckon it is in the tens of

thousands of dollars so far. What are you doing? You have a duty to protect **[S.H.]**. I would like answers.

Ted Hudacko
c: [redacted]

From: Ted Hudacko
Sent: Monday, November 1, 2021 9:29 AM
To: Daniel S. Harkins; Nathaniel Bigger
Cc: Christine Hudacko
Subject: [Q] Fertility Preservation ?? was Re: update on **[S.H.]**'s health.

Dear. Mr. Bigger and Mr. Harkins,

Please provide a more detailed update re: **[S.H.]** and the procedures that have been performed and ongoing and the counseling prior to starting GNRHa (aka "puberty blockade", aka "anti androgen"). As you know I have voiced concern re: lack of safety for this category of drugs. This is the exact same protocol as is administered to convicted sex offenders to accomplish chemical sterilization. I have specifically asked Christine twice via text message what "fertility preservation efforts were made for **[S.H.]** as what Christine has done without my consent and knowledge will destroy **[S.H.]**'s reproductive viability. Christine has ignored my inquiries. Why are you sterilizing **[S.H.]**?

Endocrine society recommendations subscribed to by WPATH, Hembree et al 2017: "We recommend that clinicians inform and counsel all individuals seeking gender-affirming medical treatment regarding options for fertility preservation prior to

initiating puberty suppression in adolescents and prior to treating with hormonal therapy of the affirmed gender in both adolescents and adults. (1 ⊕⊕⊕○)" **It is in fact one of the only 3 recommendations that is not low or very low quality or ungraded out of the 27.** So am I to understand that UCSF is not even following WPATH guidelines? Mr. Harkins you have a duty to protect **[S.H.]** and it was your Minor's Counsel report that extolled the high quality of WPATH SOC. I would appreciate answers.

Ted

From: Christine Hudacko <christinehudacko@yahoo.com>
Sent: Monday, October 18, 2021 7:47 PM
To: Ted Hudacko
Cc: Nathaniel Bigger; Daniel S. Harkins
Subject: update on **[S.H.]**'s health

Ted, **[S.H.]** has begun hormone therapy - testosterone blocker (Supprelin) via an implant and estrogen via pills (Estradiol). **[S.H.]** is doing well and happy to finally begin the process. I believe that **[S.H.]** has been very supported by UCSF and therapists over the past 12 months in determining this was the right step for them. **[S.H.]** continues to see Dr. Barrow to be supported. Insurance has paid for the vast majority of implant procedure and I sent UCSF a check for the balance ($2035.64). I don't expect that you will pay for half given your disapproval of transitioning.

[S.H.] started HRT in Aug. and I waited to tell you to be able to report how it is going so far. I also waited because frankly I am concerned how you will react and potentially act out to our children and me. Friday night's incident of you harassing me, with **[W.H.]** witnessing some of it, confirms my concerns and that **[W.H.]** will have to resume therapy with Adam when football concludes.

-Chris

Sent from Mail for Windows

Case 3:23-cv-05316-SI Document 90
Filed: 08/30/24

EXHIBIT N

[OMITTED]

EXHIBIT O

October 21, 2020

Edward Hudacko
[redacted] California [redacted]
C: [redacted]
E: [redacted]@ieee.org

Dr. Stephen M. Rosenthal, M.D.,
Medical Director of the CAGC
Diane Ehrensaft, PhD.,
Mental Health Director of the CAGC
UCSF Benioff Children's Hospital
Child and Adolescent Transgender Center Clinic
Ron Conway Family Gateway Medical Building
1825 Fourth St., Sixth Floor
San Francisco, California [94158]

Re: [S.H.] treatment/research questions.
MyChart proxy form.

Dear Drs. Rosenthal and Ehrensaft,

Thank you for meeting with my minor child, **[S.H.]**, and **[S.H.]**'s mother, Christine Hudacko, on 10/13/2020. I regret I was unable to participate. I hope this can be a cordial and constructive exchange. I have questions and concerns that I hope you will address promptly.

Please find enclosed my completed proxy form for MyChart record access re: **[S.H.]**. I was informed

that I need to provide this to **[S.H.]**'s doctor(s) in order to gain access. I appreciate your assistance in this regard.

Has **[S.H.]** been given a coded diagnosis by either you or another professional? If so, what is the diagnosis, or diagnoses? If by another professional, who? What is your relationship with this third party? What assessments were made in reaching a diagnosis? What assessments have been recommended as next steps? I have not seen any of the reports for **[S.H.]**, thus my interest and so I can be assured **[S.H.]** has a full differential diagnosis that can be validated.

I reviewed the paper you co-authored describing the four-site collaborative research network for longitudinal observational study of transgender and gender-diverse (TGD) youth undergoing medical interventions to address gender dysphoria.[1] Tables 2 and 4 of your paper enumerate Physiologic and Anthropometric Data and Mental and Behavioral Health Measures for the later pubertal cohort that **[S.H.]** presumably falls within. I welcome the opportunity to review these artifacts in **[S.H.]**'s case for my better understanding.

Is **[S.H.]** being assessed and treated in the context of standard, generally-accepted, noncontroversial and approved medical care and practice? Or, is **[S.H.]** enrolled (either formally or informally) as a test

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[1] "Creating the Trans Youth Network: A Collaborative Research Effort" *Transgend. Health* 2019 Nov 1;4(1):304-312. doi: 10.1089/trgh.2019.0024. eCollection 2019. Attached here as Exhibit A. Online at: https://pubmed.ncbi.nlm.nih.gov/31701011/ and https://www.liebertpub.com/doi/pdf/l 0.1089/trgh.2019.0024

subject for your stated goal of "collecting data?" Has **[S.H.]**'s mother, Christine, given consent for **[S.H.]**'s participation as a test subject in the NIH-funded study in which Dr. Rosenthal is named as a Principal Investigator (PI) or any other study?[2] Please identify fully the study or studies.

Consent to standard and recognized medical treatment protocols and consent to participation in a research experiment involving pre-approval therapeutic and pharmaceutical protocols are two very different things. The latter should involve a more thoughtful decision process and include the consent of *both* parents of a minor whom is being considered for any experimental treatment. It is unclear if this distinction and the experimental nature of the study underway at UCSF and other the three sites sharing in NIH grant project 5R01HD082554-05 were known to the Contra Costa Family Court when Judge Hiramoto granted temporary sole legal custody to Christine of **[S.H.]** on either 6/24/2020 or 8/26/2020.

The latter is an interesting question that unfortunately came up neither in pleadings nor during hearings. Significantly, Judge Hiramoto extended Christine's legal custody to include decisions over hormonal transition treatment at the 8/26/2020 hearing while continuing to limit decisions over surgical treatment. I'm bringing the question up now as everyone else in this matter appears to have

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[2] "The Impact of Early Treatment in Transgender Youth," NIH Project 5R01 HD082554-05. Project description attached here as Exhibit B. Online at: https://projectreporter.nih.gov/project_info_description.cfm?aid=9730239&icde=52269515

been a few steps ahead to **[S.H.]**'s and my disadvantage. This is a significant change, and in fact, is a reversal on this aspect from Judge Hiramoto's prior order post the 6/24/2020 hearing that disallowed Christine from having sole legal discretion regarding hormonal treatment.

As you should know, I contacted CAGC and communicated directly with Jessie Cohen of your staff on 7/7/2020, initially by email. Cohen explained I could request a call back from either of you by requesting same at 415-353-7337. I did so the same day, requesting to speak with Dr. Ehrensaft. Dr. Ehrensaft eventually called me more than two months later on or about 9/16/2020 at approximately 10:30 am. We spoke approximately 30 minutes. At the time, I thought ours had been a constructive conversation.

I recently reviewed itemized invoices from Daniel S. Harkins, the court-appointed Minor's Counsel in the divorce and custody matter. Dr. Ehrensaft had phone calls with Mr. Harkins on at least two dates 7/28/2020 and 8/13/2020 for a combined duration longer than Dr. Ehrensaft later spent with me 9/16/2020. I'm at a loss to understand both why Dr. Ehrensaft waited so long to contact me, **[S.H.]**'s parent, and why you prioritized two conversations with Mr. Harkins much earlier within that period and in advance of the 8/26/2020 follow-up hearing where legal custody was changed adversely.

The 8/26/2020 temporary order gave Christine sole discretion to give authorization and consent for hormonal treatment and at the same time has

forbidden my participation in medical appointments involving **[S.H.]**. However, "medical appointments" with you may be a misnomer because these also or primarily are participation in experimental research. Your timely communication with Mr. Harkins and less-than-timely communication with me, **[S.H.]**'s parent, better reflect advancing your own research objectives by enrolling another subject but arguably do not reflect the "best interest of the child," **[S.H.]**.

There are better methods of communication, education and persuasion to give assurance and to gain the buy-in of a parent with many questions such as myself. Secrecy, obfuscation and delay are not good means to engender trust. Instead, such methods of subterfuge create additional questions about motivation and intent.

According to your own "Creating the Trans Youth Network" article, "there is a lack of consensus among professionals around timing of initiation of medical interventions, as well as optimal dosing regimens."[3]

My boldness in posing these questions presents certain personal risk to myself and potentially further jeopardizes my already-degraded parental rights by virtue of an argument you raise earlier in "Creating the Trans Youth Network." You say "[d]istal stressors may include harassment, bullying, ... loss of ... family members ... [and] influence individual/proximal stressors .. . which in turn contribute to psychological distress." My questions

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[3] "Creating the Trans Youth Network: A Collaborative Research Effort" *Transgend. Health* 2019 Nov 1;4(1): pg. 305.

are rooted in concern for **[S.H.]**'s health, safety and well-being and the best interest of my child.

Many parents in my situation have similar concerns and questions but are silenced by a chilling effect created as a consequence in which our appropriate parental concerns are mischaracterized or intentionally misrepresented as being at best "unsupportive" but more frequently and defaming as "transphobic" or "bigoted." This appears what has happened in my own case and contributed largely, if not exclusively, to the current, temporary denial of my parental and custodial rights of **[S.H.]**.

Returning to Table 4, it was unclear to me that measurements of cognitive, memory and executive functions are included. These categories are not mentioned under either Construct or Measure. Please clarify.

I notice your citations did not reference the study published in 2017 that observed correlation and likely causal relation between gonadotropin releasing hormone analogs (GnRHa) and decreased cognitive and executive functions.[4] Table 4 also does not include multiple of the metrics cited by Schneider *et. al. ,* e.g., Weschler Scale (WISC-III or WISC-IV), executive function (EF), Tower of London. Without measurement of these attributes, how is it possible to track outcomes in these dimensions? I would like to

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[4] "Brain Maturation, Cognition and Voice Pattern in a Gender Dysphoria Case under Pubertal Suppression," Maiko A. Schneider *et. al.* Front Hum Neurosci. 2017;11:528. Attached here as Exhibit C and on line at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5694455/

better understand why your study appears to omit observation of these attributes.

The GnRHa suspected as culprit by Schneider *et. al.* is the same substance, is it not, that you state "lacks consensus among professionals ... of … *optimal* dosing regimens?" (Emphasis added). There appears to be a lack of consensus among professionals of the *safety* of GnRHa, not just "optimal dosing." Otherwise it appears cognitive function is not a concern of yours. I am very much concerned by this. Are you performing inappropriate human experimentation? Has **[S.H.]** or **[S.H.]**'s mother, Christine, been fully apprised of potential or known risks, including harm to cognitive, memory and executive function? Can **[S.H.]**, a minor, give appropriate consent?

Schneider *et. al s.* Background and Discussion sections cite and performed meta-analysis of numerous other human and animal studies including human subject brain diffusion tensor imaging (DTI) to measure white matter fractional anisotropy (FA). The metaanalysis collectively and consistently reinforced or failed to deny their hypothesis of negative impact to brain white matter under pubertal suppression. Schneider *et. al.* conclude, "Further longitudinal clinical studies comparing DTI parameters and cognition among TG adolescents under puberty suppression and age-matched controls with physiological pubertal development are needed in order to confirm the present findings and support the hypothesis on the impact of sex hormones on cognition and brain maturity during developmental stages."

Did you discuss the Schneider *et. al.* article with Mr. Harkins? If so, please provide the details when and the substance of such conversation(s). I shared the article with the family court in my responsive declaration to Minor's Counsel Report. At the 8/26/2020 hearing, Mr. Harkins derisively dismissed Schneider *et. al.* as "the Brazil report", completely failing to address the substance of their cognition warnings.

Is there animal experimental data to pre-validate the safety of GnRHa, especially with respect to cognitive, memory and executive function at any dosage level that provides assurance for human experimentation within known parameters for safety? What are the differences with regard to safety of GnRHa in minors vs. adults?

I support conducting good science for the advancement of humankind and knowledge. However I have doubts about this experimental design, what parameters have been included as well as excluded for observation, as well as concerns about **[S.H.]**'s participation and our informed consent.

I have come to learn that I am not alone in these concerns.[5] [6]

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[5] US Congress HR8012 *Protecting Children from Experimentation Act of 2020.* https://trackbill.com/bill/us-congress-house-bill-8012-protecting-children-from-experimentation-act-of-2020/1942605/

[6] US Congress HR8013 *End Taxpayer Funding of Gender Experimentation Act of 2020* https://trackbill.com/bill/us-congress-house-bill-8013-end-taxpayer-funding-of-gender-experimentation-actof-2020/1942604/

I hope we can work constructively through the questions and concerns I have raised above regarding **[S.H.]**'s best interests and that we can engage in an inclusive and respectful manner to avoid and correct any misunderstandings. The bottom line is that I do not want **[S.H.]** to be cognitively harmed as a consequence of experimental protocols you may be conducting or intend to conduct on **[S.H.]**, the details of which have been withheld from me and to which I have neither been asked nor given informed consent. Mine are proper parental concerns for the safety of my minor child and are only the best interest of **[S.H.]**. I look forward to your responses.

Sincerely,

/s/

Edward A. Hudacko, **[S.H.]**'s father.

Cc: Christine M. Hudacko,
Nathaniel Bigger, Esq.,
Daniel S. Harkins, Esq.,
The Honorable Joni Hiramoto,
Superior Court of Contra Costa, California.
The Honorable Mark DeSaulnier,
California C.D. 11,
The Honorable Nancy Pelosi, Speaker of
the House, California C.D. 12,
The Honorable Barbara Lee, California C.D. 13,
The Honorable Doug LaMalfa, California C.D. 1

Case 3:23-cv-05316-SI Document 90
Filed: 08/30/24

EXHIBIT P

[OMITTED FROM ORIGINAL DOCUMENT]

Case 3:23-cv-05316-SI Document 90
Filed: 08/30/24

EXHIBIT Q

[OMITTED]

Appendix G

42 U.S.C.A. § 1983
§ 1983. Civil action for deprivation of rights

Effective: October 19, 1996

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.